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Supreme Court, U.S.
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In The

Supreme Court of the United States

WALTER C. DUMAS AND DUMAS & ASSOCIATES LAW CORPORATION,

Petitioners,

vs.

BARCOSH, LTD.,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether Barcosh, LTD.'s complaint is barred by *res judicata* and preclusion by judgment.

2. Whether Barcosh, LTD. carried its burden for the granting of Barcosh, LTD.'s cross-motion for summary judgment.

3. Whether Walter C. Dumas, and/or Dumas & Associates Law Corporation should have been granted a new trial.

4. Whether Barcosh, LTD. carried its burden for the issuance of Temporary Restraining Order, Preliminary Restraining Order, Preliminary and Permanent Injunction and Writ of Sequestration.

5. Whether Walter C. Dumas, and/or Dumas & Associates Law Corporation should have been granted relief from the judgment of April 17, 2006.

PARTIES TO THE PROCEEDINGS

All parties to the proceedings appear in the caption of the case on the cover page.

CORPORATE DISCLOSURE

Pursuant to Supreme Court Rule 29.6, Dumas & Associates Law Corporation states that Dumas & Associates Law Corporation is a privately held Louisiana corporation. None of its shares are held by a publicly traded company.

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OPINIONS BELOW

The Judgment of the district court dated April 17, 2007, is set forth at App. 5.

The Opinion of the Fifth Circuit Court of Appeal dated March 20, 2008 is set forth at App. 1-4.

STATEMENT OF JURISDICTION

The judgment of the Fifth Circuit Court of Appeal was entered March 20, 2008. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTES AND RULES INVOLVED

Summary Judgment
Fed. R. Civ. P. 56(c)

> (c) **Motion and Proceedings Thereon.** The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone

although there is a genuine issue as to the amount of damages.

Ruling from Judgment or Order
Fed. R. Civ. P. 60b(4)(5)(6)

(b) **Mistakes; Inadvertinence; Excusable Neglect; newly Discovered Evidence; Fraud, etc.** (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment, upon which it is based, has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

Withdrawal
28 U.S.C. § 2042

No money deposited under section 2041 of this title shall be withdrawn except by order of the court.

In every case in which the right to withdraw money deposited in court under section 2041 has been adjudicated or is not in dispute and such money has remained so deposited for at least five years unclaimed by the person entitled thereto, such court shall cause such money to be deposited in the Treasury in the name and to the credit of the United States. Any claimant entitled to any such money may, on petition to the court and upon notice to the United States attorney and full proof of the right thereto, obtain an order directing payment to him.

La. C.C.P. Art. 425 provides in part:

> Art. 425. Preclusion by judgment
>
> A. A party shall assert all causes of action arising out of the transaction or occurrence that is the subject matter of the litigation.

La. C.C.P. Art. 2541

> A. A party seeking recognition of execution by a Louisiana court of a judgment or decree of court of the United States or a territory thereof, or of any other state, or of any foreign country may either seek enforcement pursuant to R.S. 13:4241, et seq., or bring an ordinary proceeding against the judgment debtor in the proper Louisiana court, to have the judgment or decree recognized and made the judgment of the Louisiana court.
>
> B. In the latter case, a duly authenticated copy of the judgment or decree must be annexed to the petition.

Res Judicata
La. R.S. 13:4231(2) and (3)

> (2) If the judgment is in favor of the defendant, all causes of action existing at the time of final judgment arising out of the transaction or occurrence that is the subject matter of the litigation are extinguished and the judgment bars a subsequent action on those causes of action.
>
> (3) A judgment in favor of either the plaintiff or the defendant is conclusive, in any

subsequent action between them, with respect to any issue actually litigated and determined if its determination was essential to that judgment.

Filing and Statutes of a Foreign Jurisdiction
La. R.S. 13:4242

A copy of any foreign judgment authenticated in accordance with an act of congress or the statutes of this state may be annexed to and filed with an ex parte petition complying with Code of Civil Procedure Article 891 and praying that the judgment be made executory in a court of this state. The foreign judgment shall be treated in the same manner as a judgment of a court of this state. It shall have the same effect and be subject to the same procedures, and defenses, for reopening, vacating, or staying as a judgment of a court of this state and may be enforced in the same manner.

Louisiana Rules of Court – District Court Rule 9.5

All Judgments, orders, and rulings requiring the court's signature must either be presented to the judge for signature when rendered or, if presented later, contain the typewritten name of the judge who rendered the judgment, order or ruling.

If presented later, the responsible attorney or the unrepresented party *must* circulate the proposed judgment, order or ruling to counsel for all parties and to unrepresented parties *and allows at least three working days for comment before presentation to the court.*

> When submitted, the proposed judgment, order or ruling *must be accompanied by a certificate regarding the date of mailing, hand delivery or other method of delivery of the document to other counsel of record and to unrepresented parties, and stating whether any opposition was received.*

STATEMENT OF THE CASE

Barcosh, LTD., filed a Complaint for Recognition and Enforcement of Foreign Judgment in the district court on August 24, 2006, to have an Ohio judgment rendered August 3, 2006 recognized and made executory.

The same transaction or occurrence, two (2) loans, as set forth in Barcosh, LTD.'s Complaint for Recognition and Enforcement of Foreign Judgment, were adjudicated in state court prior to Barcosh, LTD.'s attempt to have the judgment rendered in Ohio on August 3, 2006, recognized and enforced.

On September 22, 2006, in a matter entitled *Barcosh, LTD. versus Walter C. Dumas for the Dumas & Associates Law Corporation and Walter C. Dumas individually,* number C642,807 Division "D," 19th Judicial District Court, Parish of East Baton Rouge, State of Louisiana, the 19th Judicial District Court rendered a judgment dismissing all claims Barcosh, LTD. had against Walter C. Dumas and Walter C. Dumas for Dumas & Associates Law Corporation

arising out of the same transaction or occurrence which forms the subject matter of Barcosh LTD.'s complaint herein.

The Judgment rendered in Ohio on August 3, 2006 was rendered against Walter C. Dumas for the Dumas & Associates Law Corporation and Walter C. Dumas, individually. However, Barcosh, LTD.'s complaint filed in the district court to enforce the August 3, 2006 judgment named, as defendants, Walter C. Dumas, individually and Dumas & Associates Law Corporation. Walter C. Dumas for Dumas & Associates Law Corporation is not named in the complaint herein, however, it is a named defendant in the Ohio August 3, 2006 judgment.

The promissory notes which formed the basis of the Judgment set forth that Walter C. Dumas, Individually and Dumas & Associates Law Corporation are the makers. The promissory notes and security agreements are signed by Walter C. Dumas, individually and Walter C. Dumas for Dumas & Associates Law Corporation. Walter C. Dumas for Dumas & Associates Law Corporation is not a maker of the promissory notes nor the security agreements.

Walter C. Dumas and Dumas & Associates Law Corporation filed a motion to dismiss Barcosh, LTD.'s complaint. Barcosh, LTD. filed an opposition.

The district court denied the motion to dismiss but suggested to Walter C. Dumas and Dumas & Associates Law Corporation that a motion for summary appears to be the appropriate motion to file.

On December 11, 2006, Walter C. Dumas and Dumas & Associates Law Corporation filed a Motion for Summary Judgment based on *res judicata* and preclusion by judgment. On December 29, 2006, Barcosh, LTD. filed a Cross-Motion for Summary Judgment.

In support of its Cross-Motion for Summary Judgment, Barcosh, LTD. filed a Statement of Uncontested Material Facts. In paragraph 31 of Barcosh, LTD.'s Statement of Uncontested Material Facts, Barcosh, LTD. states:

> 31.
>
> The court granted the summary judgment and dismissed Barcosh's Petition to Enforce the April 4th Judgment with prejudice.

Barcosh, LTD. was referring to the summary judgment granted by the 19th Judicial District Court to Walter C. Dumas for Dumas & Associates Law Corporation and Walter C. Dumas, individually, on September 22, 2006, which dismissed all claims Barcosh, LTD. had against Walter C. Dumas for Dumas & Associates Law Corporation and Walter C. Dumas, individually. (App. 12-13) Barcosh, LTD. did not appeal that judgment. Barcosh, LTD.'s admission in its Statement of Uncontested Material Facts clearly proves that Barcosh, LTD.'s Petition to Enforce the April 4, 2006, Judgment was not dismissed with prejudice until September 22, 2006, and not on July 10, 2006 as contended by Barcosh, LTD.

As a result of the September 22, 2006 judgment, all causes of action existing at the time of the September 22, 2006, Judgment rendered in the 19th Judicial District Court, were extinguished and barred, which included the August 3, 2006, Ohio Judgment.

The Fifth Circuit Court of Appeal states in its opinion that Barcosh, LTD.'s Petition to Enforce the April 4, 2006, Judgment was dismissed without prejudice when Barcosh, LTD. agreed to set aside the April 4, 2006 Judgment.

As shown above, the April 4, 2006, Judgment was not voluntarily dismissed by Barcosh, LTD. but by the 19th Judicial District Court on September 22, 2006 when the court granted a summary judgment to Walter C. Dumas and Walter C. Dumas for Dumas & Associates Law Corporation as admitted by Barcosh, LTD.

The fact that Barcosh, LTD. appeared in court on September 22, 2006 and argued against Walter C. Dumas and Walter C. Dumas for Dumas & Associates Law Corporation's motion for summary judgment and did not one time mention that its Ex Parte Petition to Enforce Foreign Judgment had been dismissed on July 10, 2006, clearly shows that Barcosh, LTD. knew the July 10, 2006 Judgment was not valid.

Barcosh LTD. knew it had not complied with Louisiana Civil District Court Rule 9.5 in reference to the July 10, 2006 Judgment which mandates that:

> All Judgments, orders, and rulings requiring the court's signature must either be presented to the judge for signature when rendered or, if presented later, contain the typewritten name of the judge who rendered the judgment, order or ruling.
>
> If presented later, the responsible attorney or the unrepresented party *must* circulate the proposed judgment, order or ruling to counsel for all parties and to unrepresented parties *and allows at least three working days for comment before presentation to the court.* When submitted, the proposed judgment, order or ruling *must be accompanied by a certificate regarding the date of mailing, hand delivery or other method of delivery of the document to other counsel of record and to unrepresented parties, and stating whether any opposition was received.*

Barcosh, LTD.'s July 10, 2006 Judgment contains no such certificate nor was the judgment circulated to counsel for Walter C. Dumas and Walter C. Dumas for Dumas & Associates Law Corporation at least three working days before presenting the Judgment to the 19th Judicial District Court for signing.

Upon learning of the existence of the July 10, 2006 judgment through documents filed in the district court, counsel for Walter C. Dumas and Walter C. Dumas for Dumas & Associates Law Corporation presented a motion and order to set-aside the July 10, 2006 judgment to the 19th Judicial District Court and it was signed by the judge. Barcosh, LTD. did not

take any action to contest the setting aside of the July 10, 2006 Judgment nor did Barcosh, LTD. appeal.

The July 10, 2006, judgment was the second judgment Barcosh, LTD. filed to have its Ex Parte Petition to Enforce Foreign Judgment dismissed without prejudice in the 19th Judicial District Court.

On July 3, 2006, a judgment filed by Barcosh, LTD. was signed by the 19th Judicial District Court dismissing Barcosh, LTD.'s Ex Parte Petition to Enforce Foreign Judgment. This July 3, 2006, judgment was also set-aside as a result of a motion and order filed by Walter C. Dumas, individually, and for Dumas and Associates Law Corporation.

The district court granted Barcosh, LTD.'s cross-motion for summary judgment and denied Walter C. Dumas and Dumas & Associates Law Corporation motion for summary judgment.

Walter C. Dumas and Dumas & Associates Law Corporation filed a Motion for New Trial and Relief from Judgment and both were denied by the district court.

After the Motion for a New Trial was denied, Barcosh, LTD. filed a Motion for a Temporary Restraining Order, Preliminary and Permanent Injunction and Writ of Sequestration and all were granted by the district court which included restraining and enjoining Walter C. Dumas and Dumas & Associates Law Corporation from proceeding with litigations against Barcosh, LTD. in state courts.

Walter C. Dumas and Dumas & Associates timely appealed the judgments of the district court to the First Circuit Court of Appeal.

The Fifth Circuit Court of Appeal granted oral argument on January 8, 2008 and oral argument was tentatively scheduled for the week of March 3, 2008. However, a week before the scheduled oral argument, the Court cancelled oral argument. On March 20, 2008, the Fifth Circuit Court of Appeal affirmed the judgments of the district court.

REASON FOR GRANTING THE WRIT

The ruling of the Fifth Circuit Court of Appeal is in conflict with the decisions of this Court and decisions of its own Court in the application of Louisiana law of *res judicata* and preclusion by judgment.

ARGUMENT

(a) Summary Judgment Should Not Have Been Granted

In diversity cases, federal courts must apply state substantive law. *Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 79, 58 S. Ct. 817, 82 L. Ed. 1188 (1938); *Ashland Chem. Inc. v. Barco., Inc.*, 123 F.3d 261, 265 (5th Cir. 1997).

The party seeking summary judgment always bears the initial responsibility of informing the court of the basis for its motion and identifying those

portions of the record that it believes demonstrates the absence of a genuine issue of material fact. *Celotex Corp. v. Catrell,* 477 U.S. 317, 323, 106 S. Ct. 2548, 2553, 1 L. Ed. 2d 266, 274 (1986).

Summary judgment is proper when, after reviewing "the pleadings, the discovery and disclosure materials on file, and any affidavits," the court determines there is no genuine issue of material fact. Fed. R. Civ. P. 56(c).

The August 3, 2006, Ohio Judgment is subject to the same defenses as a judgment rendered in a court of Louisiana. La. R.S. 13:4242. Since the subject matter was the same for the April 4, 2006, Judgment and the August 3, 2006, Judgment, the August 3, 2006, Judgment is barred by the September 22, 2006, Judgment.

The doctrine of *res judicata* mandates the effect to be given final judgment; *res judicata* is not discretionary. *Avenue Plaza, L.L.C. v. Falgoust*, 676 So.2d 1077 (La. 7/2/96).

The policy underlying *res judicata* is to have the parties litigate all of the controversies arising out of the same transaction or occurrence at the same time, thus saving litigants from the potential injustice of having to relitigate the same matters repeatedly with potentially contradictory results. *Estay v. Terminal Stevedores, Inc.*, 806 So.2d 790, 01-1011 (La. App. 5 Cir. 12/26/01).

The Louisiana Supreme Court has held that a final judgment acquires the authority of a thing adjudged, no court has jurisdiction to change the judgment, regardless of the magnitude of the final judgment's error. *Tolis v. Board of Supervisors of Louisiana State University*, 660 So.2d 1206 (La. 10/16/95). There was no error made in the 19th Judicial District Court. If an error had been made, Barcosh, LTD. would have certainly appealed.

This suit is also barred under federal *res judicata. Howell Hydrocarbons, Inc. v. Adams*, 897 F.2d 183 (5th Cir. 1990). "Once a court decides an issue of fact or law that is necessary to its judgment that decision precludes relitigation of the same issue in a difference cause of action between the same parties." *Roland v. Owens*, 786 So.2d 167, *writ denied*, 795 So.2d 1213 (La. 8/31/01) See also *Hudson v. City of Bossier*, 766 So.2d 738, 33,620 (La. App. 2 Cir. 8/25/00), *writ denied*, 775 So.2d 450, 2000-2687 (La. 11/27/00).

If it is determined that the Ohio Judgment of August 3, 2006 is not barred by *res judicata*, it should not apply to Dumas & Associates Law Corporation because Dumas & Associates Law Corporation was not a party to the Ohio suit and Dumas & Associates Corporation is not named in the Ohio August 3, 2006, judgment. Walter C. Dumas for Dumas & Associates Law Corporation is named in the judgment. The Ohio suit named Walter C. Dumas for Dumas & Associates Law Corporation because the name appears as such on the promissory notes and security agreements in reference to the two loans. However, in these

documents, Dumas & Associates Law Corporation is named as one of the makers and should have been named in the Ohio suit as a defendant and in the August 3, 2006 Judgment. The other maker is Walter C. Dumas, individually.

Barcosh, LTD. had the right to bring an ordinary proceeding against Walter C. Dumas, individually and Walter C. Dumas for Dumas & Associates Law Corporation or Dumas & Associates Law Corporation pursuant to Louisiana Code of Civil Procedure article 2541 which provides the right of a party to seek recognition or execution by a Louisiana court of a judgment of another state or the right to have a foreign judgment recognized and made executory pursuant to La. R.S. 13:4241 et seq. Barcosh, LTD. made the decision to proceed pursuant to La. R.S. 13:4241, et seq.

La. R.S. 13:4241 et seq. and particularly, La. 13:4242 provides that foreign judgments seeking to be recognized and made executory shall be subject to the same procedures and defenses of a judgment of this State. *Res Judicata* and preclusion by judgment are defenses.

La. R.S. 13:4231(2) and (3) of the *res judicata* statute provide (2) that a valid and final judgment is conclusive between the parties when a judgment is rendered in favor of the defendant, all causes of actions existing at the time of the final judgment arising out of the transactions or occurrence that is the subject of the matter are extinguished and the

judgment bars subsequent action on those cause of action, and (3) a judgment in favor of the defendant is conclusive, in any subsequent action between the plaintiff and defendant, with respect to any issue actually litigation and determined if its determination was essential to that judgment.

Additionally, Louisiana Code of Civil Procedure 425 (preclusion by judgment) provides in part (A) a party shall assert all causes of action arising out of the transaction or occurrence that is the subject matter of the litigation. The same two (2) loans were the subject matter of the April 4, 2006, and August 3, 2006, Ohio judgments. The comment under Louisiana Code of Civil Procedure 425 states:

> This amendment expands the scope of this Article to reflect the changes made in the defense of res judicata and puts the parties on notice that all causes of action arising out of the transaction or occurrence that is the subject matter of the litigation must be raised.

As a result of the failure of Barcosh, LTD. to supplement and amend its Exparte Petition for Recognition and Enforcement of Foreign Judgment in the 19th Judicial District Court before it was dismissed on September 22, 2006 to include any cause of actions it considered it had against Walter C. Dumas, individually, and Walter C. Dumas for Dumas & Associates Law Corporation based on the August 3, 2006, Judgment, resulted in those causes of action being waived. *Westerman v. State Farm Mut. Auto Ins. Co.*, 834 So.2d 445, 2001-2159 (La. App. 1 Cir. 9/27/02).

In *Wise v. Lewing*, 446 So.2d 964 (La. App. 3 Cir. 1984) and in *Curtis v. Interstate in Brands Corporation*, 782 F.Supp. 31 (M.D. La. 1992), the courts of Louisiana and the United States District Court for the Middle District of Louisiana held in identical factual situation that a suit to have foreign judgment made executory and subsequent complaint making new allegations not made in a prior complaint are barred by *res judicata* and preclusion by judgment under Louisiana law and barred by *res judicata* and the preclusion doctrine under federal law.

In *Wise*, a suit was brought to have a foreign money judgment made executory. Judgment was rendered in favor of the defendant because the foreign judgment was not authentic. Plaintiff filed a second and identical lawsuit again seeking to have the now authentic foreign judgment made executory. Defendant filed a peremptory exception of *res judicata* which was sustained by the trial court. Plaintiff appealed and the appellate court in affirming the trial court judgment held:

> "Since the second suit, now on appeal, asserts the same demand against the same party based on the same cause of action as does the first suit, we conclude that the trial court was correct in granting defendant's exception of res judicata."

In *Curtis*, decided by the United States District Court for the Middle District of Louisiana, the court that granted Barcosh, LTD. its Cross-Motion for Summary Judgment, the plaintiff had previously filed

a complaint which was dismissed. Plaintiff filed another complaint which reasserted the same facts as the first complaint with additional allegations under Racketeer Influenced and Corrupt Organizations Act (RICO). The district court held that doctrine of *res judicata* barred the second complaint. See also *Lowe v. Prejean*, 540 So.2d 436 (La. App. 1 Cir. 1989).

More importantly, in *Curtis*, the district court in addressing the doctrine of claim preclusion under the rules of *res judicata* stated:

> "The doctrine of 'claim preclusion' under the rules of res judicata treats a judgment, once rendered, as the full measure of relief to be accorded between the same parties on the same 'claim' or 'cause of action.' When a judgment has been rendered for a defendant, the plaintiff's claim is extinguished; the judgment then acts as a 'bar.' The effect of the judgment extends to the litigation of all issues relevant to the same claim between the same parties, whether or not raised at trial. The aim of claim preclusion is to avoid multiple suits on identical entitlements or obligations between the same parties."

The Fifth Circuit Court of Appeal, in *St. Paul Mercury Insurance Co. v. Williamson*, 224 F.3d 425 (5th Cir. 2000) in addressing the preclusion law of Louisiana stated "the district court had to give the same preclusive effect to the Louisiana state court judgment as would a Louisiana Court. Applying this

ruling, the August 3, 2006, Ohio Judgment is barred by preclusion by judgment.

Further, the Fifth Circuit Court of Appeal in *Travelers Ins. Co. v. St. Jude Hosp. of Kenner of Louisiana, Inc.*, 37 F.3d 193 (5th Cir. 1994), *rehearing and suggestion for rehearing denied*, 41 F.3d 666, *cert. denied*, 514 U.S. 1065, 115 S. Ct. 1696, 131 L. Ed. 2d 559 (1995), in addressing the cause of action stated:

> "To determine whether same cause of action is involved, as required for later came to be barred under federal res judicata rules, critical issue is not relief requested or theory asserted, but whether plaintiff bases two actions on same nucleus of operative facts; res judicata bars all claims that were or could have been advanced in support of cause of action on occasion of its former adjudication, not merely those that were adjudicated."

In *Louisiana Seafood Management v. Foster*, 40 F.Supp. 2d 533 (E.D. La. 1999), the district court held "Louisiana's doctrine of res judicata bars relitigation of both claims and issues arising out of same factual circumstances if there has been valid final judgment."

In *Gladney v. American Heritage Life Ins. Co.*, 80 F.Supp. 2d 594 (W.D. La. 1999), the district court held "under Louisiana law, determination of applicability of res judicata doctrine depends on whether: (1) plaintiff's claims in present suit arise out of same transaction or occurrence as those causes of action which were fully litigated in previous suit, and (2) plaintiff's claims in present suit existed at time of

final judgment in previous suit." The claims of Barcosh, LTD. in the August 3, 2006, Judgment arise out of the same transaction or occurrence which was the subject matter of the September 22, 2006, Judgment rendered in the 19th Judicial District Court. The August 3, 2006, Judgment was existing at the time the September 22, 2006, Judgment was rendered.

"[A] federal court must give to a state-court judgment the same preclusive effect as would be given that judgment under the law of the State in which the judgment was rendered." *Migra v. Warren City School Dist. Bd. Of Educ.*, 465 U.S. 75, 81, 104 S. Ct. 892, 79 L. Ed. 2d 56 (1984); *Baker Group, L.C. v. Burlington Northern and Santa Fe Railway Company*, 228 F.3d 883 (8th Cir. 2000).

Under Louisiana Law, courts are without power to adjudicate rights of a person who is not named as a defendant. *Dennis v. Liberty Mutual Insurance Company,* 645 So.2d 1227, 940026 (La. App. 1 Cir. 11/10/94); *Miller v. Bailey*, 621 So.2d 1174 (La. App. 3 Cir. 1993), *writ denied*, 629 So.2d 358 (La. 11/5/93).

Dumas & Associates Law Corporation was not named as a defendant in the Ohio proceedings. The April 4, 2006 and the August 3, 2006 judgments were not rendered against Dumas & Associates Law Corporation. The plaintiff in the Ohio proceedings named the defendants and prepared and presented the judgments for signing.

The promissory notes and security agreements herein clearly show the makers are Walter C. Dumas,

individually and Dumas & Associates Law Corporation. Walter C. Dumas for Dumas & Associates Law Corporation is not a maker of the promissory notes nor security agreements which formed the basis for the August 3, 2006 Judgment.

Summary judgment should be granted if the record, taken as a whole, "together with the affidavits, if any show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(b). See also *New York Life Ins. v. Travelers Co.*, 92 F.3d 336, 338 (5th Cir. 1996); *Rogers v. Int'l Marine Terminal, Inc.*, 87 F.3d 755, 758 (5th Cir. 1996). Barcosh, LTD. failed to carry its burden.

(b) A New Trial should have been granted

Walter C. Dumas, individually and Dumas & Associates Law Corporation re-urge and adopt the above in support of their argument for a new trial. Dumas and Associates Law Corporation was not a party to any suit nor any judgment rendered in the State of Ohio. Therefore, the Motion for New Trial in favor of Dumas & Associates Law Corporation should have been granted.

(c) Relief from Judgment should have been granted

The Judgment of April 17, 2007, is barred by res judicata and preclusion by judgment as a result of the

September 22, 2006, Judgment rendered in the 19th Judicial District Court, Parish of East Baton Rouge, State of Louisiana. Therefore, Walter C. Dumas and Dumas & Associates Law Corporation should be relieved from the enforcement of the April 17, 2007, Judgment. Fed. R. Civ. P. 60(b)(4)(5)(6).

"Relief may also be granted where the judgment or order is void, whether because the court lacked jurisdiction over the subject matter, lacked personal jurisdiction over the parties, acted in some manner inconsistent with constitutional due process, or otherwise acted beyond the powers granted to it under law. *Callon Petroleum Co. v. Frontier Ins. Co.*, 351 F.3d 204, 208 (5th Cir. 2004).

"Judgments entered beyond the court's authority to act are 'void.'" See *Eberhardt v. Integrated Design & Const., Inc.*, 167 F.3d 861, 871 (4th Cir. 1999); and *In re Crivello*, 134 F.3d 831, 838 (7th Cir. 1998).

Relief from a judgment may also be granted where the continued enforcement of the judgment would be inequitable. See *Agostini v. Felton*, 521 U.S. 203, 117 S. Ct. 1997, 138 L. Ed. 2d 391 (1997).

The April 17, 2007, Judgment is void. Therefore, Walter C. Dumas and Dumas & Associates Law Corporation should be relieved from the judgment. See *Carter v. Fenner*, 136 F.3d 1000, 1005 (5th Cir. 1998).

Alternatively, and only in the alternative, that the judgment is determined to be valid against Walter

C. Dumas, individually, it should not be valid as to Dumas & Associates Law Corporation.

(d) Temporary Restraining Order, Preliminary Restraining Order, Preliminary and Permanent Injunction and Writ of Sequestration should not have been granted

Based upon the summary judgment, Barcosh, LTD. on May 19, 2007, moved the district court for a Temporary Restraining Order, Preliminary and Permanent Injunction and Writ of Sequestration and set forth, "It is evident that Dumas intends to use these state court proceedings in tandem to unlawfully and improperly extract the $751,000.00 in the registry of the 22nd JDC. Barcosh believes it is in imminent danger of losing its collateral through defendants' actions."

The Temporary Restraining Order was issued after the denial of the Motion for New Trial making the Temporary Restraining Order, Preliminary Injunction and Writ of Sequestration moot. The denial of the Motion for New Trial ended the case. There was no status quo to maintain.

The primary justification for granting a preliminary injunction is to preserve the court's ability to render a meaningful decision on the merits. As a result of the district court denying the motion for new trial, there will be no decision to be made on the merits of this case. There was no need for any type of injunction.

The district court issued a temporary restraining order on May 30, 2007, which enjoined Walter C. Dumas and Dumas & Associates Law Corporation from taking any action in two (2) state court lawsuits, the first of which is entitled *Barcosh, Ltd. v. Walter C. Dumas, et al.*, No. 542807, 19th Judicial District Court, Parish of East Baton Rouge, State of Louisiana and the second is entitled In re: Chemical Release at Bogalusa, Petition for Concursus, Suit No. 73341, 22nd Judicial District Court, Parish of Washington, State of Louisiana.

Further, the district court issued a writ of sequestration directing the Clerk of Court for the Middle District of Louisiana to direct the United States Marshal's Office for the Middle District of Louisiana and to the extent appropriate and/or required by law, direct the United States Marshal's Office for the Eastern District of Louisiana to seize, take into their possession and custody, and to deposit in the registry of the district court any and all sums held by the Clerk of Court for Washington Parish, Louisiana, which are held under a Petition for Concursus in the legal action entitled In Re: Chemical Release at Bogalusa, Petition for Concursus, Suit No. 73341, 22nd Judicial District Court, Parish of Washington, State of Louisiana. The funds were deposited in the registry of the Clerk of Court for Washington Parish, State of Louisiana.

A temporary restraining order must state reasons for issuance and specific terms without reference

to another document. See *Advent Electronic, Inc. v. Buckman*, 112 F.3d 267 (7th Cir. 1997).

There is no reason given by the district court in the order for restraining Walter C. Dumas and Dumas & Associates Law Corporation from taking steps to prosecute their claims in the two state lawsuits mentioned above as required by Rule 65(b) of the Federal Rules of Civil Procedure.

Additionally, the verified complaint and affidavit by Barcosh, LTD.'s counsel fail to set forth facts to show the immediate and irreparable injury Barcosh, LTD. will suffer if the temporary restraining order is not issued.

Barcosh, LTD. had requested a stay in one of the state cases because of the federal proceedings which was denied due to the court having already ruled that these federal proceedings had nothing to do with the concursus proceedings.

Barcosh, LTD. filed an Exception of Lis Pendens in the concursus proceedings requesting the 22nd Judicial District Court, Washington Parish, Louisiana to do the following:

> " . . . stay the concursus proceedings until a decision is rendered by the federal court in that matter entitled *Barcosh, Ltd. versus Walter C. Dumas and Dumas & Associates Law Corporation*, Civil Action No. 06-616, JJB-SCR, United States District Court, Middle District of Louisiana.

> For judgment recognizing and enforcing the judgment of the Lucas County Common Pleas Court located in Toledo, Ohio, rendered on August 3, 2006, in that matter entitled *Barcosh, Ltd. versus Walter C. Dumas, etc., et al.*, Case No. CI0200601880, Court of Common Pleas, Lucas County, State of Ohio, wherein judgment was rendered in favor of Barcosh, Ltd., and against Walter C. Dumas and Dumas & Associates Law Corporation, jointly and severally, on the two purchase contracts and promissory notes referred to above in paragraphs 7and 8 as follows: (A) On Loan 1 in the amount of $349,871.69 plus interest at the rate of 1.25% per fifteen day period from April 25, 2004 until paid in full; and, (B) On Loan 2 in the amount of $113,776.08 plus interest at the rate of 1.00% per fifteen day period from February 11, 2005 until paid in full, plus costs and attorneys fees."

The 22nd Judicial District Court, Washington Parish, Louisiana, denied Barcosh, LTD.'s Lis Pendens which included Barcosh, LTD.'s request for a judgment recognizing and enforcing the Ohio August 3, 2006 judgment.

The request for the temporary restraining order and writ of sequestration was Barcosh, LTD.'s fourth attempt to seize the funds on deposit in the registry of the Clerk of Court for Washington Parish, Louisiana, which is located in the jurisdiction of the Eastern District of Louisiana.

The first attempt was by garnishment. The second attempt was made when appellee filed a removal motion and a motion to transfer attempting to move the concursus proceedings pending in Washington Parish to the United States District Court for the Eastern District of Louisiana and a Motion to Transfer the Funds to the United States District Court for the Middle District of Louisiana. The Removal Motion was denied and the concursus proceedings were remanded to the 22nd Judicial District Court, Washington Parish, Louisiana. The Motion to Transfer was rendered moot by the United States District Court for the Eastern District of Louisiana.

The third attempt was made by Barcosh, LTD. in a letter to the district judge dated May 11, 2007.

The fourth was the request for Writ of Sequestration.

The concursus proceedings pending in the 22nd Judicial District Court, Parish of Washington, Louisiana, and the proceedings pending in the 19th Judicial District Court, Parish of East Baton Rouge, Louisiana, have nothing to do with the summary judgment granted to Barcosh, LTD. in the district court.

On June 6, 2007, the district court issued its ruling making the temporary restraining order permanent, restraining and permanently enjoining Walter C. Dumas and Dumas & Associates Law Corporation from taking any steps to prosecute any legal actions including, but not limited to, filing any

pleadings or requesting any hearings in the two (2) state court suits.

The Anti-Information Act prohibits the district court from interfering with these state court proceedings.

This Court ruling in *Vines v. University of Louisiana at Monroe,* 398 F.3d 700 (5th Cir. 2005) clearly supports appellants' position.

In *Vines*, the Fifth Circuit stated:

> The Anti-Injunction Act generally prohibits federal courts from interfering with proceedings in state court. 28 U.S.C. §2283 (2004). There are only three specific circumstances in which a federal court can enjoin a state court proceeding, when it is (1) expressly authorized by a federal statute; (2) necessary to assert jurisdiction; or (3) necessary to protect or effectuate a prior judgment by a federal court. Id.; St. Paul Mercury Ins. Co., 332 F.3d at 308-09. The third exception is referred to as the "relitigation" exception. "The relitigation exception was designed to permit a federal court to prevent state litigation of an issue that previously was presented to and decided by the federal court. It is founded in the well-recognized concepts of res judicata and collateral estoppel." Chick Kam Coo v. Exxon Corp. 486 U.S. 140, 147, 108 S. Ct. 1684, 100 L. Ed. 2d 127 (1988).

None of these exceptions exist in this case. More importantly, the district court enjoined a state

proceeding based upon a judgment rendered September 22, 2006, that was issued approximately eight (8) months prior to the April 10, 2007, ruling granting Barcosh, LTD.'s cross-motion for summary judgment. The judgment was signed on April 17, 2007.

Barcosh, LTD. alleged that it would clearly suffer irreparable injury, loss, or damage if defendants are able to *unlawfully* extract the monies held in the registry of the 22nd Judicial District Court. It is common knowledge that funds deposited in the registry of the court can only be withdrawn by an order of the court. Therefore, without a court order the funds can not be released.

The district court later issued a supplemental reason for injunctive relief and judgment.

After the funds were seized from the registry of the Clerk of Court for the 22nd Judicial District Court, Parish of Washington, Louisiana, and deposited in the registry of the district court, Barcosh, LTD. filed a Motion for Withdrawal and Release of Funds deposited in the registry of the district court.

The funds in the registry of the district court were improperly transferred from the United States District Court for the Eastern District of Louisiana to the United States District Court for the Middle District of Louisiana. The funds were not subject to any judgments or orders issued by the district court. The rendering of the prior rulings and judgments by the district court did not make Barcosh, LTD., owner

of the funds that were on deposit in the registry of the court for the 22nd Judicial District Court.

Barcosh, LTD., filed a Motion for Withdrawal and Release of Funds in the registry of the court pursuant to 28 U.S.C. § 2042 and previous rulings, orders and judgments of the district court and it was granted by the district court. Barcosh, LTD., failed in its motion to prove ownership of the deposited funds and the Motion for Withdrawal and Release of Funds should have been denied.

CONCLUSION AND RELIEF SOUGHT

The complaint herein is based upon the same transaction or occurrence that has been adjudicated by a judgment rendered on September 22, 2006, in the 19th Judicial District Court, Parish of East Baton Rouge, Louisiana, and is barred by *res judicata* and preclusion by judgment.

This Honorable Court should grant petitioners' writ application and reverse the Judgment of the Fifth Circuit Court of Appeal.

Alternatively, and only in the alternative, Walter C. Dumas and/or Dumas & Associates Law Corporation pray that they be granted a new trial or be

relieved from the Judgment of the Fifth Circuit Court of Appeal.

Respectfully submitted,

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Attorneys for Petitioners
Walter C. Dumas and Dumas
& Associates Law Corporation

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 07-30566
No. 07-30613
No. 07-30768

BARCOSH LTD.

Plaintiff-Appellee

v.

WALTER C. DUMAS; DUMAS & ASSOCIATES LAW CORPORATION

Defendants-Appellants

Appeals from the United States District Court
Middle District of Louisiana
USDC No. 3:06-CV-616

(Filed March 20, 2008)

Before JONES, Chief Judge, and DAVIS and GARZA, Circuit Judges.

PER CURIAM:*

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* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Barcosh sued Walter C. Dumas and Dumas & Associates (collectively, "Dumas") on a debt in Ohio state court and obtained a default judgment in August 2006. Barcosh then brought an action in the U.S. District Court for the Middle District of Louisiana ("Middle District") to enforce that judgment. Barcosh prevailed at every stage below, and Dumas appealed at every stage, as will be described. The appeals are meritless.

First, the Middle District granted Barcosh's motion for summary judgment, ruling that the August 2006 Ohio judgment was valid and enforceable. Dumas appealed that ruling to this Court in case number 07-30613. Shortly thereafter, the Middle District learned that Dumas was working in Louisiana state court in an apparent effort to relitigate the enforceability of the August 2006 judgment. Dumas also was attempting to extract funds held in the registry of the 22nd Judicial District Court of Louisiana – funds that Dumas had expressly pledged as security for the debt to Barcosh. The Middle District enjoined Dumas's actions and ordered that the funds held by the 22nd District be transferred to the registry of the Middle District. Dumas appealed these orders in appeal number 07-30566. Most recently, the Middle District ordered that the pledged funds be released to Barcosh in partial satisfaction of the August 2006 Ohio judgment. Dumas appealed this order in appeal number 07-30768. All three of Dumas's appeals are consolidated here for administrative purposes.

The procedural background of this case is extensive, but the following facts will suffice. There were two separate default judgments from the Ohio court, and two separate enforcement actions in Louisiana. The first Ohio judgment was entered against Dumas in April 2006, and Barcosh brought an action in Louisiana state court to enforce it. That Louisiana state court action was dismissed without prejudice when Barcosh agreed to set aside the April 2006 judgment and allow Dumas additional time to answer in Ohio. After Dumas failed to answer, the Ohio court issued a second default judgment against Dumas in August 2006. Barcosh filed the present lawsuit in the Middle District to enforce this second, August 2006 judgment.

Dumas's main argument in all three appeals is that *res judicata* prevents the Middle District action from going forward. Specifically, Dumas claims both the Louisiana state court enforcement action and the Middle District enforcement action are based on the same subject matter, namely, the substantive debt Dumas owes Barcosh. This argument is meritless. The subject matter of an enforcement action is the foreign judgment itself, not the underlying claim that has already been adjudicated. As the district court noted, "matters of enforcement are based on the *fact of* the judgment rather than the *facts behind* the judgment." Here, neither the Louisiana court nor the Middle District was required (or permitted) to look into the merits of Dumas's underlying debt to Barcosh. *See Milwaukee County v. M.E. White Co.*, 296

U.S. 268, 275-76 (1935). Rather, each court was concerned only with the foreign judgment before it, and in this case there were two distinct judgments. The record reflects that the Louisiana state court action concerned only the enforcement of the April 2006 judgment. When the April 2006 judgment was set aside for procedural reasons, the Louisiana state court action was dismissed without prejudice. Those proceedings implicated neither the validity of Dumas's underlying debt nor the August 2006 judgment on it. Accordingly, the district court's summary judgment in favor of Barcosh is affirmed.

Nor did the district court abuse its discretion in the other matters on appeal including, *inter alia,* the enforceability of the August 2006 judgment, the propriety of injunctive relief, the sequestration of funds, and the release of funds to Barcosh. These issues were properly addressed by the district court and require no further discussion. For essentially the same reasons stated below, the judgments of the district court in all three appeals before this Court are AFFIRMED.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

BARCOSH, LTD.
VERSUS
WALTER C. DUMAS, ET AL.

CIVIL ACTION
NO. 06-616-JJB

FINAL JUDGMENT AND ORDER

(Filed Apr. 17, 2007)

For written reasons assigned (docs. 46 and 47).

IT IS ORDERED, ADJUDGED AND DECREED that plaintiff Barcosh, Ltd. is entitled to recognition and enforcement of the default judgment rendered against defendants Walter C. Dumas and Dumas & Associates Law Corporation on August 3, 2007, in the Court of Common Pleas of Lucas County, Ohio.

IT IS FURTHER ORDERED that plaintiff may proceed with execution of the judgment in accordance with law. A copy of said judgment is attached as Exh. "A".

Baton Rouge, Louisiana, April 17th 2007.

/s/ James J. Brady
JAMES J. BRADY, JUDGE
MIDDLE DISTRICT
OF LOUISIANA

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

BARCOSH, LTD. **CIVIL ACTION**
Plaintiff **NO. 06-616-JJB-SCR**

VERSUS

WALTER C. DUMAS, and DUMAS & ASSOCIATES LAW CORPORATION

Defendants

****

JUDGMENT

(Filed Jun. 7, 2007)

This matter came before the Court this date on plaintiff's, Barcosh, Ltd.'s, motion for preliminary and permanent injunctions. Present in Court on behalf of plaintiff were L. J. Hymel, John C. Anderson and Tim P. Hartdegen. Present on behalf of defendants, was Travis Turner.

After considering the evidence adduced, argument of counsel, the law and for oral reasons this date assigned:

IT IS ORDERED, ADJUDGED AND DECREED that the temporary restraining order previously issued in these proceedings on May 30, 2007, be made permanent.

IT IS FURTHER ORDERED that the defendants, their agents and attorneys be, and they hereby

are, restrained and permanently enjoined from taking any steps to prosecute any legal actions, including but not limited to, filing any pleadings, or requesting any hearings, in those two state court actions (hereinafter referred to as the "State Court Lawsuits"), the first of which is entitled "Barcosh, Ltd. v. Walter C. Dumas, et al, No. 542807, 19th Judicial District Court, Parish of East Baton Rouge, State of Louisiana" and the second of which is entitled "In re: Chemical Release at Bogalusa, Petition for Concursus, Suit No. 73341, 22nd Judicial District Court, Parish of Washington, State of Louisiana."

IT IS FURTHER ORDERED that the defendants, their agents and attorneys be, and they hereby are, restrained and permanently enjoined from taking any action or attempting to take any action to extract any funds or sums of money from the registry of this Court or the registries of the two state courts in the 19th Judicial District and the 22nd Judicial District in the two State Court Lawsuits.

IT IS FURTHER ORDERED that the two state court lawsuits be, and are hereby, restrained and permanently enjoined from proceeding any further or acting in any manner.

IT IS FURTHER ORDERED that the writ of sequestration previously issued on May 30, 2007, be, and is hereby recognized directing the Clerk of Court for the Middle District of Louisiana to direct the United States Marshal's Office for the Middle District of Louisiana, and to the extent appropriate and/or

required by law, direct the United States Marshal's Office for the Eastern District of Louisiana to seize, take into their possession and custody, and to deposit in the registry of this Court any and all sums held by the Clerk of Court for Washington Parish, Louisiana, which are held under a Petition for Concursus in the legal action entitled "In re: Chemical Release at Bogalusa, Petition for Concursus, Suit No. 73341, 22nd Judicial District Court, Parish of Washington, State of Louisiana."

IT IS FURTHER ORDERED that the Clerk of this Court hold said funds in the registry of this Court pending further court order.

IT IS FURTHER ORDERED that no bond is required of plaintiff, Barcosh, Ltd.

JUDGMENT RENDERED IN OPEN COURT on the 6th day of June, 2007, at 10:45 A. M.

JUDGMENT SIGNED on this 7th day of June, 2007, at 11:10 A o'clock A. M. in Baton Rouge, Louisiana.

/s/ James Brady
JAMES J. BRADY
UNITED STATES DISTRICT JUDGE
MIDDLE DISTRICT OF LOUISIANA

IN THE COURT OF COMMON PLEAS
OF LUCAS COUNTY, OHIO

BARCOSH, LTD.,	CASE NO. CI0200601880
Plaintiff,	JUDGE DARTT
vs.	**JUDGMENT ENTRY**
WALTER C. DUMAS, etc., et al.,	(Filed Aug. 3, 2006)
Defendants	

****

This cause came on for hearing upon Plaintiff's Complaint, and the Court finds that Defendants Walter C. Dumas, Individually, and Walter C. Dumas for Dumas and Associates Law Corporation are in default for failure to answer or otherwise plead, and Plaintiff is entitled to judgment in its favor.

It is therefore ORDERED, ADJUDGED AND DECREED that Plaintiff have judgment against Defendants Walter C. Dumas, Individually, and Walter C. Dumas for Dumas and Associates Law Corporation, jointly and severally, as follows:

(A) On Loan 1 in the amount of $349,871.69 plus interest at the rate of 1.25% per fifteen day period from April 25, 2004 until paid in full;

(B) On Loan 2 in the amount of $113,776.08 plus interest at the rate of 1.00% per fifteen day period from February 11, 2005 until paid in full;

(C) The costs of this action in the amount of $136.00; and

(D) Attorney fees in the amount of $20,776.81.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Security Agreement and the Absolute, Unconditional, and Irrevocable Transfer, Sale and Assignment be, and are hereby recognized.

/s/ [Illegible] Yarbrough
for JUDGE DENISE ANN DARTT
Judge Steve Yarbrough

BARCOSH, LTD.	NO. 542807	DIV. D
VS.	19th JUDICIAL DISTRICT COURT	
WALTER C. DUMAS, FOR THE DUMAS & ASSOCIATES LAW CORPORATION AND WALTER C. DUMAS, INDIVIDUALLY	PARISH OF EAST BATON ROUGE STATE OF LOUISIANA	

ORAL REASONS FOR JUDGMENT

(Filed May 15, 2007)

BY THE COURT:

The Court has carefully reviewed this matter and is firmly of the opinion that the August 3rd, 2006 judgment is barred by *res judicata* and is preclusion inasmuch as the plaintiff failed to include and bring all of the causes of action it may have had against defendants. Therefore, the Court is going to grant leave to file supplemental and amending petition. Judgment to be signed accordingly.

BARCOSH, LTD.	NUMBER: 542807
	DIVISION: "D"
VERSUS	
WALTER C. DUMAS, for the DUMAS & ASSOCIATES LAW CORPORATION and WALTER C. DUMAS, individually	19th JUDICIAL DISTRICT COURT
	PARISH OF EAST BATON ROUGE
	STATE OF LOUISIANA

JUDGMENT

The Motion for Summary Judgment filed herein by Walter C. Dumas, for the Dumas & Associates Law Corporation and Walter C. Dumas, individually, came for hearing on September 22, 2006.

After considering the evidence, pleadings, memorandum and the argument of counsel, and for oral reasons assigned;

IT IS ORDERED that the Motion for Summary Judgment filed by Walter C. Dumas, for the Dumas & Associates Law Corporation and Walter C. Dumas, individually is hereby granted

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Barcosh, LTD's claims against Walter C. Dumas, for the Dumas & Associates Law Corporation and Walter C. Dumas, individually are hereby dismissed with prejudice at Barcosh LTD's costs.

JUDGMENT READ, RENDERED AND SIGNED this 22 day of Sept. 2006, Baton Rouge, Louisiana.

/s/ Janice Clark
HONORABLE JANICE CLARK
19TH JUDICIAL DISTRICT COURT

Respectfully submitted:

DUMAS & ASSOCIATES
LAW CORPORATION
The Lawyer's Complex
1263 Government Street
Post Office Box 1366
Baton Rouge, Louisiana 70821-1366
Telephone: (225) 383-4701

By: /s/ Travis Turner
Travis J. Turner
Bar Roll No.: 29462

I hereby certify that on this day a notice of the above judgment was mailed by me, with sufficient postage affixed, to: Anderson, Turner

Done and signed on 9-28-06
/s/ E. Knight
Deputy Clerk of Court

COGNOVIT PROMISSORY NOTE

$349,871.69 Date: October 28, 2003

FOR VALUE RECEIVED, Walter C. Dumas and Dumas & Associates Law Corporation (Maker) promises to pay **CORE FUNDING GROUP, L.P.** (Holder), a Texas limited partnership with its principal office located at 11200 Westheimer, Suite 620, Houston, TX 77042 the sum of Three Hundred Forty-Nine Thousand Eight Hundred Seventy-One and 69/00($349,871.69) Dollars to paid as follows.

The principal shall be paid on or before: April 26, 2004 (the Due Date).

Maker(s) shall have the right of repayment of this Note at any time.

All payments shall be made in lawful legal tender money of the United States of America at the office of the holder hereof at 11200 Westheimer, Suite 620, Houston, TX 77042 or at such other place as the holder hereof may, from time to time, designate in writing without presentment of this Note.

If default shall be made in the making of any payment required hereunder and such default shall continue for fourteen (14) days, the total amount of this obligation shall become immediately due and payable and shall bear interest at the rate of 1.00% percent per ten-day period from the Due Date (or earlier acceleration thereof or from any permitted extension thereof). All interest calculations shall be

made on the basis of a three hundred sixty (360) day year, which shall be calculated on the actual number of days in each month. All costs of collection shall be paid by the Maker(s) including reasonable attorney fees and all court costs.

The granting, with or without notice, of any extensions of time for the repayment of any sum or sums due hereunder or the taking of or release of any security shall in no way release or discharge the liability of any Maker(s), endorser or guarantor hereof and shall not constitute waiver of any of the rights of Holder which may be exercised at Holder's sole discretion.

This Note is secured by a Security Agreement by which Maker(s) grants Core Funding Group a security interest and a lien on my attorney fee expectation in the following case(s):

a) *In Re Chemical Release at Bogalusa* in the 22nd Judicial District Court, Parish of Washington, State of Louisiana Case Number: 7334

b) Should the specifically-pledged cases mentioned above not be sufficient to retire the this Note, Maker also agrees to pledge accounts, accounts receivable, attorney fee receivables, referral fee receivables, contract rights, bank depository accounts and general intangibles, and other evidences of amounts owed to Grantor whatsoever, as well as Grantor's attorney fee expectation for all work in

progress whether presently existing or hereafter acquired or arising and no matter where located.

Initials WCD

* * *

EXHIBIT A

As used in the PC, the Assignment and other transaction documents (if any), the following terms shall have the meanings given them hereinafter:

Seller Information:
Name: Walter C. Dumas & Dumas & Associates Law Corporation
Address: 1263 Government Street, Baton Rouge, LA 70821-1366
Phone Number: 225-383-4701
Tax I.D. Number: *_____
Social Security Number: *_____

Settlement/Lawsuit/Annuity Information:
Case Caption: In Re Chemical Release at Bogalusa
Case Number: 73341
Court: 22nd Judicial District Court, Parish of Washington, State of Louisiana
Presiding Judge: *_____
Plaintiff(s)/Claimants: *_____
Defendant(s) various railroad companies, insurers and chemical companies
Date of Settlement Agreement/Court Order or Trial Date (circle which): *_____
Estimated Minimum Fee to be received: *_____

Remaining Balance (details all payments yet to be received by Seller under the above Settlement Agreement/Court Order/Annuity): *_____

Subject Payment (details only that/those payment(s) being sold by Seller to Purchaser): One lump sum payment of $349,871.69*

*the $349,871.69 Subject Payment amount assumes the payoff on the Due Date. Payoff of the Subject Payment amount either prior to or after the Due Date will be pursuant to the following terms:

> there is a "flat minimum charge" of 3% for the first 30 days (i.e. 3% of $9,000, or $, for a 30-day payoff amount of $309,000). Thereafter for the next one hundred fifty (150) days (i.e. up through the Due Date), the charge will be 1.25% for each 15 day window that opens up. After one hundred eighty days (180) days (i.e. after the Due Date) the rate will be 1.25% for each 15-day period until the obligation is satisfied in full.

Due Date (date on or before which Purchaser is to receive the Subject Payment): April 25, 2004

Purchase Price (amount to be paid to Seller by Purchaser to purchase the Subject Payment): April 25, 2004

Seller hereby expressly represents and warrants that all of the above information is true, correct and complete, and that Purchaser may rely upon same.

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* to be provided by Seller

Date: 10-28-03 Signature:
/s/ Walter Dumas
Walter Dumas, Individually

Date: 10-28-03 Signature:
/s/ Walter C. Dumas
Authorized Signatory
for Dumas & Associates
Law Corporation, A
Professional Corporation

ABSOLUTE, UNCONDITIONAL, AND IRREVOCABLE TRANSFER, SALE AND ASSIGNMENT

This ABSOLUTE, UNCONDITIONAL, AND IRREVOCABLE TRANSFER, SALE AND ASSIGNMENT (this "Assignment") is executed effective as of October 28, 2003 by Walter C. Dumas and Dumas & Associates Law Corporation of 1264 Government Street, Baton Rouge, LA 70821 as assignor (the "Seller"), in favor of Core Funding Group, L.P. as assignee (the "Purchaser"). All capitalized forms not otherwise defined herein shall have the meanings given to them in *Exhibit A* which is attached hereto and incorporated herein for all purposes by this reference.

RECITALS:

The Seller, the Remaining Balance and the Subject Payment (i.e. that which is being assigned hereby are all described in further detail on Exhibit

A). On October 28, 2003 Seller and Purchaser entered into a Purchase Contract (the "PC") providing for Seller's sale, transfer, and conveyance to Purchaser of all of the Remaining Balance, to the extent of the Subject Payment(s) purchased.

In order to induce the Purchaser to purchase and accept same and pay to Seller the Purchase Price provided for in the PC, the Seller desires and has agreed to sell, transfer, and convey to Purchaser all such benefits and the proceeds thereof to the extent necessary for Purchaser to receive the benefit of its bargain; all as set forth in the succeeding provisions of this Assignment (which shall control over any conflicting or inconsistent recitals set forth above).

ASSIGNMENTS AND AGREEMENTS:

In consideration of the above premises and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the Seller does hereby agree as follows:

1. *Assignment With Warranty of Title.* Seller has TRANSFERRED, SOLD, ASSIGNED, GRANTED, AND CONVEYED and by these presents hereby TRANSFERS, SELLS, ASSIGNS, GRANTS AND CONVEYS unto the Purchaser all of Seller's right, title and interest in, to and under the Remaining Balance, but only to the extent necessary for Purchase to receive the benefit of its bargain hereunder, (i.e. the Subject Payment) – see Exhibit A;

TO HAVE AND TO HOLD the above rights, titles, estates, interests, powers, privileges, and benefits unto Purchaser, its heirs, executors, administrators, representatives, successors, and assigns forever, and Seller does hereby bind Seller and Seller's estate, heirs, executors, administrators, legal representatives, successors, and assigns to WARRANT AND FOREVER DEFEND, all and Singular the Subject Payment unto Purchaser, his heirs, executors, administrators, representatives, successors, and assigns against every person whomsoever claiming any interest whatsoever in, to or under the Settlement or any part thereof. Notwithstanding anything to the contrary in the PC, Seller's sale and Assignment of the above described beneficiary's rights is intended to be, and shall be, binding upon Seller's estate, and Seller's heirs, executors, and administrators, notwithstanding any designation of Seller's estate (or any other person) to the contrary.

2. *No Assumption By Purchaser.* Seller hereby expressly acknowledges that Seller is retaining any and all of the duties, liabilities, and obligations of Seller under the Settlement, Lawsuit, Annuity, etc., and all other documents executed in connection with or otherwise related to any of the foregoing. Any acceptance of the Subject Payment by Purchaser shall be deemed to be an express disclaimer of any assumption by Purchaser of any such duty, liability, or obligation. Seller agrees to indemnify, hold harmless, and defend Purchaser from and against any such duties, liabilities, or obligations.

3. *Powers and Warranties.* Seller has all requisite power and authority to make this Assignment. All of the representations and warranties of the Seller under the PC Exhibit A and the Seller's Affidavit (if required) are incorporated herein by this reference and confirmed and restated as of the date hereof as remaining and being entirely true and correct.

4. *Binding Agreement.* Subject to the restrictions on transfers and encumbrances set forth herein, this Assignment shall inure to the benefit of and be binding upon the undersigned Seller and Seller's estate, heirs, executors, administrators, representatives, successors, and assigns. No mention herein of assigns of the Seller shall be construed as permitting or authorizing Seller's assignment of any portion of the PC or Seller's duties, obligations, and liabilities hereunder and thereunder, all of which shall be and are hereby made expressly non-assignable.

5. *Purchaser's Right to Assign.* Purchaser (and each and any assignee of Purchaser) may assign its right, title, and interest in and to this Assignment and the Subject Payment without any requirement of prior consent from or notice to the Seller. Seller agrees expressly that upon any such assignment, Purchaser shall without any requirement of further documentation, be released automatically from any liability hereunder and thereunder. Without limiting the breadth of the foregoing sentence, Seller shall, upon request of Purchaser or any successive Purchaser execute and deliver any such documents as Purchaser

may require to effectuate and consummate this transaction, as assigned.

6. *Severability.* In the event that any provision of this Assignment or the application thereof to any person or circumstance is determined to be to any extent unenforceable under, or contrary to, any existing or then existing local, state or federal law, regulation, rule, or order, then said provision shall be deemed excised therefrom with respect to, and shall be deemed a nullity as applied to, such person or circumstance, as the case may be, without in any way affecting any other provision hereunder or the application of such provision to different persons or circumstances, the remainder of the Assignment to be enforced without regard to the excised and nullified portion. Provided, however, that the parties agree to negotiate in good faith to implement any modifications of the excised and nullified provision and/or this Assignment to the extent, but only to the extent, clearly necessary in order to maintain or obtain the enforceability of the Assignment in accordance with the actual intent of the parties hereto as evidenced herein and by the PC on the date that this Assignment is executed and accepted by the parties hereto (as evidenced hereby). Any such finding of unenforceability or invalidity shall not prevent the enforcement of said provision in any other jurisdiction to the maximum extent permitted by applicable law.

7. *Survival.* All of the representations, warranties, covenants, agreements, indemnifications, obligations, duties, and liabilities of Seller and Purchaser set

forth in the express provisions of this Assignment, and the PC, shall survive until the receipt by Purchaser, its assignee/designee of good funds representing the last of the Subject Payment.

IN WITNESS WHEREOF, the Seller has caused this Assignment to be executed effective as of the date first stated above.

SELLER
/s/ Walter C. Dumas
Walter C. Dumas,
Individually

/s/ Walter C. Dumas
Authorized Signatory
for Dumas & Associates
Law Corporation

STATE OF LOUISIANA)
PARISH) SS:
~~COUNTY~~ of EAST BATON ROUGE)

This instrument was sworn and subscribed to before me on 10-28, 2003 by WALTER C. DUMAS and WALTER C. DUMAS, as authorized signatory for Dumas & Associates Law Corporation.

[SEAL] /s/ Patti Durio Hatch
Notary Public in and for the State of Louisiana

Printed Name: Patti Durio Hatch

My Commission Expires: at death

SECURITY AGREEMENT

THIS SECURITY AGREEMENT ("Agreement") is made and entered into this 28th day of October 2003 by Walter C. Dumas, Individually and Dumas & Associates Law Corporation of 1263 Government

Street, Baton Rouge, LA 70821 (hereinafter collectively "Grantor") for the benefit of Core Funding Group, L.P., a Texas limited partnership, 11200 Westheimer, Suite 620, Houston, TX 77042 ("Secured Party").

As one of the conditions to consummating the transaction contemplated by the "Offer to Purchas/Purchase Contract" dated October 28, 2003, by and between Grantor and Secured Party, Secured Party has required that Grantor execute and deliver this Security Agreement as security for the performance of Grantor's obligations under the Offer to Purchase/Purchase Contract and the Cognovit Promissory Note ("Note). Grantor has agreed to enter into this Security Agreement, and Grantor's agreement to do so was and is a material inducement to Secured Party to likewise enter into the transaction contemplated by the Contract Documents.

NOW THEREFORE, in consideration of the covenants and agreements herein contained and other valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged and confessed by Grantor, Grantor hereby agrees as follows:

SECTION ONE

DESCRIPTION OF SECURITY PLEDGED

A. Note

Pursuant to the Note, executed and given by Grantor for value received, Grantor has promised to

pay to Secured Party, its assignee or designee on or before the Due Date, the sum of $349,871.69. The Note (while it may or may not necessarily be security for the repayment of the contracted for sum) is a negotiable instrument for all purposes, and shall be conclusive evidence of Grantor/Debtor's absolute obligation to repay, as and when due, the Purchased Amount under the Purchase Contract.

Grantor has delivered to Secured Party (or subsequent to the execution hereof, will deliver to Secured Party as soon as possible pursuant hereto), the Note, together with all of the hereinafter-indicated security. Failure to timely deliver the Note and all of the Collateral pledged hereby shall be an event of default/breach of contract, entitling Secured Party to pursue all legal remedies, including, but not limited to, those provided for hereinafter.

B. Description of Collateral Other than Note Securing Performance

1. Grantor hereby pledges all of Grantor's accounts, accounts receivable, attorney fee receivables, referral fee receivables, contract rights, bank depository accounts and general intangibles, and other evidences of amounts owed to Grantor whatsoever, as well as Grantor's attorney fee expectation for all work in progress whether presently existing or hereafter acquired or arising and no matter where located, all of which have been pledged as security for the payment of the

Purchased Fees plus accrued interest. *Exclusion from Collateral*; "Collateral" shall not include funds on deposit in trust account(s) or escrow accounts(s) maintained by you or other properly under your control but which are required by your state bar to be segregated from your personal assets.

2. Grantor specifically pledges Grantor's expectation of receiving an attorney fee from the following case(s) as specific collateral for this transaction, which, together with any proceeds thereof relating thereto, shall be subject to the escrow provision set forth in Subsection C hereinafter:

   a. *In Re Chemical Release at Bogalusa* in the 22nd Judicial District Court Parish of Washington, State of Louisiana Case Number: 73341

C. Escrow Requirement with Respect to Specifically Pledged Collateral

Grantor shall immediately upon receipt of attorney fees (after payment of a referral fee, if any) in the above-referenced cases listed in Section One (B)(2) notify Secured Party of Grantor's receipt of same and shall place said pledged fees into Grantor's IOLTA trust account. Grantor shall continue to escrow in the above manner any and all funds received on cases specifically pledged in Section One (B)(2) until the end of each month, upon which time Grantor shall remit those funds directly to Core Funding Group. This procedure shall continue until Grantor's note

and all other sums due and payable to Lender, if any, have been paid to Secured Party. Regular monthly reports shall be furnished to Secured Party regarding any escrowed funds in Grantor's trust account. Funds in Grantor's trust account in which Secured Party has an interest shall not be paid to anyone except Secured Party.

SECTION TWO
DEFINITIONS

Unless otherwise defined herein, capitalized terms used herein shall have the meanings set forth for same in the Purchase Contract or other Contract Documents where defined.

The term "Liabilities" is defined for purposes hereof as the Note, this Agreement, the Offer to Purchase/Purchase Contract, and all other obligations of any kind owed by Grantor to Secured Party, including, but not limited to, any costs/expenses (including attorney fees) associated with enforcement/collection of the Note and/or disposal of Collateral in an attempt to satisfy same.

The term "Collateral" is defined as Grantor's attorney fee expectation in the case(s) listed in Section One (B)(2) of this agreement and all property indicated in the description of collateral in Section One (B)(1)(2) of this Agreement, including any distributions with respect thereto and/or proceeds thereof. Provided, however, that all tangible, intangible and

other property whatsoever not subject to any security interest is also at risk by Grantor in satisfaction of the liability provided for in the Note and Contract Documents.

The term "Note" means the Cognovit Promissory Note.

The term "Contract Documents" means the Note, the Security Agreement, and the Offer to Purchase/Purchase Contract.

Unless the context requires otherwise (e.g. the term in question has been previously defined in this or another Contract Document), all terms used herein shall be construed as defined in the Uniform Commercial Code of Ohio and shall have the meaning stated therein.

SECTION THREE

REPRESENTATIONS AND WARRANTIES

Regarding any loan extended by Secured Party to Grantor, Grantor warrants that Grantor will use such funds for business purposes and that such funds will not be used for consumer, family or household needs.

All of the representations and warranties made and set forth in the Purchase Contract and other Contract Documents are hereby expressly incorporated herein by reference.

All statements made with respect to the Collateral (e.g. existence, title to, value of, etc.) are true and accurate.

Grantor shall not, either before or after the closing on the transaction contemplated by this Agreement and the other Contract Documents, cause or permit any act or omission that could result in any waste, impairment or diminution in the value of the Collateral pledged hereby, or which could otherwise negatively affect the practical benefit of Secured Party's bargain obtained under this Agreement and the other Contract Documents.

Grantor will not cause to be placed, or suffer or permit to be placed, any liens, encumbrances, etc., other than Secured Party's, upon any of the Collateral or any other assets of Grantor which may be utilized to satisfy Grantor's obligation/liabilities to Secured Party under the Note and other Contract Documents.

Regarding any attorney fee funds due and owing to Secured Party, resulting from legal fees received by Grantor from cases pledged as collateral in Section One (B)(2) of this instrument Grantor warrants and promises that he will act in a fiduciary and trustee capacity towards Secured Party.

SECTION FOUR
DUTIES OF GRANTOR

In addition to any other duties required elsewhere hereunder or under any other Contract Document(s), at any time, and from time to time, upon demand of Secured Party, Grantor shall: (1) Deliver and pledge to Secured Party, endorsed or accompanied by whatever instrument or assignment, and in whatever form Secured Party may request, any other instrument, document, paper or other writing as Secured Party may specify with respect to the Collateral hereunder; (2) Give, execute or record any notice, document or other paper or writing that Secured Party to enforce its rights; (3) Keep and mark all documents, chattel paper and records relating to inventory, accounts, contracts and any other writing that Secured Party may require with respect to the Collateral; (4) Permit the agents or representatives of the Secured Party in any time to inspect the records with respect to the Collateral provided; (5) Cooperate with Secured Party in any manner deemed necessary/desirable by Secured Party to protect Secured Party's investment and/or to perfect its interest in the Collateral pledged as security hereby; (6) Immediately notify Secured Party regarding any attorney fees received from cases listed in Subsection One (B)(2) of this instrument; (7) Immediately notify Secured Party of any breach of contact and/or of the escrow provisions set forth herein in Section One.

SECTION FIVE

FILING FINANCING STATEMENTS

Secured Party, in its discretion, may file (and Grantor shall cooperate in the preparation and filing of) one or more UCC financing statements under appropriate Federal or State Laws naming Grantor as Grantor and Secured Party as Secured Party and indicating any and all of the Collateral. For so long as Grantor has any repayment obligation (owes any money) to Secured Party, without prior written consent of Secured Party, Grantor shall not file or permit to be filed with respect to the Collateral any financing statement in which Secured Party is not named as the sole secured party.

Secured Party shall have the right, at any time, to execute and file this Agreement as a UCC financing statement, and/or to prepare and file other financing statements as provided for elsewhere herein, but the failure to do so shall not impair the validity or enforceability of this Agreement.

SECTION SIX

COLLATERAL UNDER CONTROL OF SECURED PARTY

If the Collateral, or any part thereof, shall at any time come under the control of the Secured Party or any of its agents, servants or representatives, the Secured Party, in its sole discretion, may transfer or

register, in the name of itself or its nominee, any of the Collateral.

Subject to the escrow provisions, set forth in Section One (C) hereinabove, Secured Party shall receive any income, benefits or other rights with respect to the Collateral provided and may treat the Collateral as its own property on such terms as the Secured Party deems best and exercise any power with respect to the Collateral with the same force and effect as though the Secured Party were the absolute owner thereof. The Secured Party need not give notice of its actions described herein and shall not be liable except to account for property actually received by it.

SECTION SEVEN

DEFAULT

1. On default of Grantor in connection with any of the Liabilities, including, but not limited to, any breach of any provision of any Contract Document whether such default be that of the Grantor or other party obligated, Grantor shall, on the written request of Secured Party, assemble the Collateral at the place Secured Party designates in its request. Secured Party shall have the same rights and remedies with respect to the Collateral as does a secured party under the Uniform Commercial Code and shall have all rights held by the Grantor with respect to the Collateral.

2. The Grantor shall also be in default under this Agreement on the occurrence of any of the following events or conditions:

a) If Secured Party fails to receive all contracted-for amounts (i.e. repayment of the Purchased Fee Amount plus any other contractually agreed-upon amount, if any), on or before the Due Date and/or if the Grantor fails to pay when due any indebtedness secured by this Agreement, either principal or interest;

b) If the Grantor defaults in the punctual performance of any of he obligations, covenants, terms, or provisions contained or referred to in this Agreement, the Note or any other Contract Document;

c) If any warranty, representation, or statement contained in this Agreement, or any other Closing Document, or made or furnished to the Secured Party by or on behalf of the Grantor in connection with same, or made or furnished to induce the Secured Party to purchase the Purchased Fees from Grantor, proves to have been false in any material respect when made or furnished;

d) If there is any loss, theft, substantial damage, destruction, sale or encumbrance of or to any of the Collateral or any assertion or making of any levy, seizure, or attachment of or on the Collateral;

e) If the Grantor dies, dissolves, terminates its existence, or fails in business; if a receiver is

appointed for all or any part of the property of the Grantor; if there is an assignment for the benefit of creditors by the Grantor; or if a meeting of creditors of the Grantor is called;

f) If any statement of the financial condition of the Grantor or of any guarantor, surety, or endorser of any liability of the Grantor to the Secured Party submitted to the Secured Party by the Grantor or any such guarantor, surety, or endorser proves to be false;

g) If the Collateral becomes, in the judgment of the Secured Party, unsatisfactory or insufficient in character or value;

h) If any guarantor, surety, or endorser for Grantor defaults in any obligation or liability to the Secured Party;

i) If the Secured Party receives notice at any time from any third party that the third party is acquiring or attempting to acquire a security interest of any kind in any of the Collateral that is the subject of this Agreement;

j) If the Secured Party learns that Grantor has violated, plans to violate, or has a record or reputation for violating any federal or state law relating to liquor, narcotics, or any commercial crime;

k) If Grantor removes or replaces any of the component parts of Collateral and/or materially impairs/lessens the market value of the Collateral;

l) Failure by Grantor to immediately notify Secured Party of Grantor's receipt of attorney fees from any specifically pledged collateral under Section One (B)(2) of this instrument; or

m) Failure by Grantor to immediately notify Secured Party of any breach by Grantor of the escrow provisions contained in Section One (C) or of any other breach of any of the Contract Documents.

n) If any insurance insuring the Collateral and the respective interests of the parties in the Collateral is canceled for any reason and Grantor fails or refuses to furnish written proof to the Secured Party that Grantor has obtained substitute insurance coverage replacing the canceled policies;

SECTION EIGHT

REMEDIES

1. Upon the occurrence of any event of default which is described in Section Seven hereof or in any of the Contract Documents, and at any time after default, Secured Party may declare any and/or all secured and/or unsecured obligations immediately due and payable and may proceed to enforce payment of the obligations and exercise any and all of the rights and remedies provided by the Uniform Commercial Code (including, but not limited to proceeding against any Collateral pledged hereunder), as well as exercising any

and/or all other rights and remedies at law or in equity possessed by Secured Party including but not limited to putting opposing counsel and or an adjuster for a case specifically pledged as collateral in Section One (B)(2) on notice (by certified mail, intervention in a legal proceeding or otherwise) of Secured Party's lien and requesting that Secured Party's name be placed on any settlement check or payments of judgment.

2. All rights and remedies of the Secured Party under this Agreement are cumulative with any right or remedy that Secured Party may have at law or in equity or under any other contract or document for the enforcement of the security interest created in this Agreement or the collection of the debt, and the exercise of one or more rights or remedies shall not prejudice or impair the concurrent or subsequent exercise of any other rights or remedies.

SECTION NINE

COST OF COLLECTION

Grantor shall pay to Secured Party all expenses incurred by Secured Party, including reasonable attorneys' fees expended by Secured Party in enforcing any of the provisions of this Agreement and/or any other Contract Document(s) including attorney fees for obtaining a judgment and, in addition, attorney fees incurred in enforcement of any judgment.

SECTION TEN

ACCELERATION CLAUSE/DEFAULT RATE

In addition to any other rights/remedies set forth in this Agreement, and/or any of the other Contract Documents, and in addition to any other rights/remedies Secured Party may have in law/equity, if Grantor fails to timely furnish to Secured Party attorney fees Grantor received from case(s) specifically pledged as collateral under Section One (B)(2) of this instrument, or should Grantor fail to make payment of the Note as and when due (e.g. on the Due Date, or, if applicable, on the Extended Due Date) or upon the happening of any other event of default, then all sums payable to Secured Party under the Purchase Contract and/or the other Contract Documents (including but not limited to, the Note) shall be immediately accelerated and due and payable to Secured Party/its Assignee or designee. In the event of such an acceleration, then interest shall immediately begin to run and be due and payable on the outstanding Purchased Fees of the Note/outstanding balance of the Purchased Fees, at the Default Rate of 1.25% (one and one quarter percent) interest per ten (10) day period thereafter until full satisfaction of the obligation.

SECTION ELEVEN

WAIVER OF PRESENTMENT, PROTEST AND NOTICE OF DISHONOR

Grantor waives presentment, protest and notice of dishonors and Grantor waives any rights to all other notices or demands that might otherwise be required by law, or to which Grantor might otherwise be entitled.

SECTION TWELVE

USUARY SAVINGS CLAUSE

It is the intention of Secured Party and Grantor that provisions of the Purchase Contract and the other Contract Documents constitute a purchase and sale and absolute and unconditional assignment of all of Seller's right, title an interest in and to the Purchased Fees and is not, nor should it be construed to be, a loan. Nor should the Note and/or Guaranty executed on even date herewith be construed to be a loan, as same are being given merely as security to ensure the payment of the Purchased Fees. Nonetheless, in order to protect against any conceivable determination that the conveyance was not effective, in the event of a determination by any Court or other trier of fact that the subject transaction does constitute a loan rather than a sale, it is the intent of Secured Party and Grantor to conform to and contract in strict compliance with applicable usury law from time to time in effect. In such event, all agreements between Secured Party and Grantor are hereby

limited by the provisions of this paragraph which shall override and control all such agreements, whether now existing or hereafter arising and whether written or oral. In no way, nor in any event or contingency (including, but not limited to prepayment, default, demand for payment, or acceleration of the maturity of any obligation) shall the rate of interest taken, reserved, contracted for, charged or received under this Agreement or the other Contract Documents or otherwise, exceed the Maximum Lawful Rate (defined below). If, from any possible construction of any document deemed by the trier to be a loan, interest would otherwise be payable in excess of the Maximum Lawful Rate, any such construction shall be automatically reformed and the interest payable shall be automatically reduced to the Maximum Lawful Rate, without the necessity of execution of any amendment or new document. As used herein, the term "*Maximum Lawful Rate*" means the maximum nonusurious rate of interest per annum permitted by whichever applicable law permits the higher interest rate for business or commercial transactions.

SECTION THIRTEEN

INCORPORATION BY REFERENCE

All of the terms and provisions of the Offer to Purchase/Purchase Contract and Cognovit Promissory Note are hereby incorporated herein by reference the same as if fully set forth at length.

Grantors:
/s/ Walter C. Dumas
Walter C. Dumas,
Individually

/s/ Walter C. Dumas
Authorized Signatory
for Dumas & Associates
Law Corporation

STATE OF LOUISIANA)
PARISH) ss:
~~COUNTY~~ of EAST BATON ROUGE)

This instrument was sworn and subscribed to before me on 10-28, 2003 by Walter C. Dumas and Walter C. Dumas.

/s/ Patti Durio Hatch
Notary Public in and for the State of Louisiana
Printed Name: Patti Durio Hatch

PROMISSORY NOTE

$113,776.08 Due Date: February 11, 2005

FOR VALUE RECEIVED, Walter C. Dumas, Individually, and Dumas & Associates Law Corporation (Maker) promises to pay **CORE FUNDING GROUP, L.P.** (Holder), at 11200 Westheimer, Suite 620, Houston, TX 77042, the sum of One Hundred Thirteen Thousand Seven Hundred Seventy-Six Dollars and Eight Cents ($113,776.08) to paid as follows:

The principal shall be paid on or before: February 11, 2005 (the Due Date).*

the $113,776.08 Subject Payment amount assumes a payoff on the Due Date of February 11, 2005. Payoff of the Subject Payment amount either prior to or after the Due Date will be pursuant to the following terms:

there is a "flat minimum charge" of 3% for the first 30 days (i.e. 3% of $100,000.00, or $3,000.00, for a 30-day payoff amount of $103,000.00). Thereafter for the next one hundred twenty (120 days (i.e. up through the Due Date), the charge will be 1.00% for each 15 day window that opens up. After one hundred twenty days (120) days (i.e. after the Due Date) the Rate will be 1% for each 15-day period until the obligation is satisfied in full.

Maker(s) shall have the right of repayment of this Note at any time.

All payments shall be made in lawful legal tender money of the United States of America at the office of the holder hereof at 11200 Westheimer, Suite 620, Houston, TX 77042 or at such other place as the holder hereof may, from time to time, designate in writing without presentment of this Note.

If default shall be made in the making of any payment required hereunder and such default shall continue for fourteen (14) days, the total amount of this obligation shall become immediately due and payable and shall bear interest at the rate of 1.00% percent per fifteen-day period from the Due Date (or earlier acceleration thereof or from any permitted extension thereof). All interest calculations shall be made on the basis of a three hundred sixty (360) day year, which shall be calculated on the actual number of days in each month. All costs of collection shall be paid by the Maker(s) including reasonable attorney fees and all court costs.

The granting, with or without notice, of any extensions of time for the repayment of any sum or sums due hereunder or the taking of or release of any security shall in no way release or discharge the liability of any Maker(s), endorser or guarantor hereof and shall not constitute waiver of any of the rights of Holder which may be exercised at Holder's sole discretion.

This Note is secured by a Security Agreement by which Maker(s) grants Core Funding Group a security

interest and a lien on my attorney fee expectation in the following case(s):

a) *In Re Chemical Release at Bogalusa* in the 22nd Judicial District Court, Parish of Washington, State of Louisiana, Case Number: 73341

Should any case listed above settle before this Promissory Note's Due Date, Maker will promptly apply Maker's full attorney fee – after payment of a referral fee, if any – toward prepayment of this Promissory Note.

Regarding any and all aspects of Maker's relationship with Core Funding, Maker agrees to act as a fiduciary and trustee towards Core Funding, with Core Funding as the beneficiary and Maker assuming towards Core Funding all the obligations and duties the law imposes upon trustees and fiduciaries.

The Security Agreement signed by Maker and the Offer to Purchase/Purchase Contract signed by Maker are specifically incorporated herein the same as if fully set forth as length. No modification, amendment, deletion, addition to or other change to any Contract Document shall be effective for any purpose unless specifically set forth in writing and signed by the party or parties to be bound thereby.

Maker agrees to indemnify and to hold harmless Core Funding and its officers, general partner and agents, including but not limited to, Thomas F. Emmick, from any and all claims, lawsuits and

judgments, including attorney fees, that may be asserted related to this loan or attempts to collect the loan to have resulted from the sole or partial negligence or gross negligence or breach of any common law or statutory law or contract by Core or Core's officers, general partner or agents. By signing this contract Maker assigns and conveys to Core Funding any cause of action Maker has or may have against Core Funding or Core's officers, general partner, or agents related to this loan or any attempt to collect it.

The happening of any one or more of the following events shall be deemed a default under this Note.

A) Failure of Maker(s) to make payment when due under this Note, or the breaching of any of the other terms and conditions of the Offer to Purchase/Purchase Contract, Security Agreement and all other contract documents, if any;

B) The Maker(s) makes an assignment for the benefit of its creditors;

C) The Maker(s) petitions or applies to any court for the appointment of a trustee or receiver for itself or commences any proceeding relating to itself under the Bankruptcy Code, assignment, insolvency, or readjustment of debt; or

D) Any petition or application that is filed or any proceeding as hereinbefore described in subparagraph (C) above is commenced against the Maker(s), and either the Maker(s), by any act, indicates their approval thereof, consents thereto, or acquiesces thereto, or Maker(s)

fails to secure dismissal of such proceedings therein within (60) days.

In the event of any condition of default, the Holder at its option may elect to accelerate all the amounts due and payable under this note without notice to Maker(s).

The Maker(s) hereby waives presentment, demand, notice of dishonor, protest, and notice of nonpayment and protest.

This Note evidences a loan, which is made for business purposes and not for consumer, family or household needs.

This Note was prepared in Toledo, Lucas County, Ohio.

The Maker(s) hereof, jointly and severally if applicable, agrees to be responsible for this Note.

The Contract Documents (Promissory Note, Offer to Purchase/Purchase Contract and Security Agreement) supersede all other agreements, oral or written, heretofore made regarding the subject matter hereof and the transactions contemplated hereby and contain the entire agreement of the parties. There are no unwritten oral agreements between the parties hereto. The Contract Documents cannot be modified, amended or changed, in any manner, except in a writing signed by the party or parties to be bound thereby.

The Maker(s), and Endorser, if any, hereof hereby authorize any attorney at law to appear

in any court of record in Lucas County, State of Ohio, after this note becomes due, whether by acceleration or otherwise, and to waive the issuing and service of process and confess a judgment in favor of the legal holder hereof against the Maker(s) and Endorser, or either or any one or more of them, for the amount of principal and interest then appearing due upon this note, together with costs of suit, including reasonable attorney fees, and to release all errors and waive all rights to appeal.

WARNING – BY SIGNING THIS PAPER YOU GIVE UP YOUR RIGHT TO NOTICE AND COURT TRIAL. IF YOU DO NOT PAY ON TIME A COURT JUDGMENT MAY BE TAKEN AGAINST YOU WITHOUT YOUR PRIOR KNOWLEDGE AND THE POWERS OF A COURT CAN BE USED TO COLLECT FROM YOU REGARDLESS OF ANY CLAIMS YOU MAY HAVE AGAINST THE CREDITOR WHETHER FOR RETURNED GOODS, FAULTY GOODS, FAILURE ON HIS PART TO COMPLY WITH THE AGREEMENT, OR ANY OTHER CAUSE.

MAKER/BORROWER:

1263 Government Street /s/ Walter C. Dumas
Walter C. Dumas,
Individually

Baton Rouge, LA 70802 /s/ Walter C. Dumas
Authorized Signatory
for Dumas & Associates
Law Corporation

SECURITY AGREEMENT

THIS SECURITY AGREEMENT ("Agreement") is made and entered into this 13th day of August, 2004 by Walter C. Dumas, Individually, and Dumas & Associates Law Corporation of 1263 Government Street, Baton Rouge, LA 70821 hereinafter collectively "Grantor") for the benefit of Core Funding Group, L.P., a Texas limited partnership, 11200 Westheimer, Suite 620, Houston, TX 77042 ("Secured Party").

As one of the conditions to consummating the transaction contemplated by the "Offer to Purchase/ Purchase Contract" dated August 13, 2004, by and between Grantor and Secured Party, Secured Party has required that Grantor execute and deliver this Security Agreement as security for the performance of Grantor's obligations under the Offer to Purchase/ Purchase Contract and the Promissory Note ("Note). Grantor has agreed to enter into this Security Agreement, and Grantor's agreement to do so was and is a material inducement to Secured Party to likewise enter into the transaction contemplated by the Contact Documents.

NOW THEREFORE, in consideration of the covenants and agreements herein contained and other valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged and confessed by Grantor, Grantor hereby agrees as follows:

SECTION ONE

DESCRIPTION OF SECURITY PLEDGED

A. Note

Pursuant to the Note, executed and given by Grantor for value received, Grantor has promised to pay to Secured Party, its assignee or designee on or before the Due Date, the sum of $113,776.08. The Note (while it may or may not necessarily be security for the repayment of the contracted for sum) is a negotiable instrument for all purposes, and shall be conclusive evidence of Grantor/Debtor's absolute obligation to repay, as and when due, the Purchase Amount under the Purchase Contract.

Grantor has delivered to Secured Party (or subsequent to the execution hereof, will deliver to Secured Party as soon as possible pursuant hereto), the Note, together with all of the hereinafter-indicated security. Failure to timely deliver the Note and all of the Collateral pledged hereby shall be an event of default/breach of contract, entitling Secured Party to pursue all legal remedies, including, but not limited to, those provided for hereinafter.

B. Description of Collateral Other than Note Securing Performance

1. Grantor hereby pledges all of Grantor's accounts, accounts receivable, attorney fee receivables, referral fee receivables, contract rights, bank depository accounts and general intangibles, and other evidences of amounts

owed to Grantor whatsoever, as well as Grantor's attorney fee expectation for all work in progress/process whether presently existing or hereafter acquired or arising and no matter where located, all of which have been pledged as security for the payment of the Purchased Fees plus accrued interest. *Exclusion from Collateral*: "Collateral" shall not include funds on deposit in trust account(s) or escrow accounts(s) maintained by you or other property under your control but which are required by your state bar to be segregated from your personal assets.

2. Grantor specifically pledges Grantor's expectation of receiving an attorney fee from the following case(s), as specific collateral for this transaction, which, together with any proceeds thereof relating thereto, shall be subject to the escrow provision set forth in Subsection C hereinafter:

   a. *In Re Chemical Release at Bogalusa* in the 22nd Judicial District Court, Parish of Washington, State of Louisiana, Case Number: 73341

C. Escrow Requirement with Respect to Specifically Pledged Collateral

Grantor shall immediately, upon receipt of attorney fees (after payment of a referral fee, if any) in the above-referenced cases listed in Section One (B)(2), notify Secured Party of Grantor's receipt of same and shall place said pledged fees into Grantor's

IOLTA trust account. Grantor shall continue to escrow, in the above manner, any and all funds received on cases specifically pledged in Section One (B)(2) until the end of each month, upon which time Grantor shall remit those funds directly to Core Funding Group. This procedure shall continue until Grantor's note and all other sums due and payable to Lender, if any, have been paid to Secured Party. Regular monthly reports shall be furnished to Secured Party regarding any escrowed funds in Grantor's trust account. Funds in Grantor's trust account in which Secured Party has an interest shall not be paid to anyone except Secured Party.

SECTION TWO
DEFINITIONS

Unless otherwise defined herein, capitalized terms used herein shall have the meanings set forth for same in the Purchase Contract or other Contract Documents where defined.

The term "Liabilities" is defined for purposes hereof as the Note, this Agreement, the Offer to Purchase/Purchase Contract, and all other obligations of any kind owed by Grantor to Secured Party, including, but not limited to, any costs/expenses (including attorney fees) associated with enforcement/collection of the Note and/or disposal of Collateral in an attempt to satisfy same.

The term "Collateral" is defined as Grantor's attorney fee expectation in the case(s) listed in Section One (B)(2) of this agreement and all properly indicated in the description of collateral in Section One (B)(1)(2) of this Agreement, including any distributions with respect thereto and/or proceeds thereof. Provided, however, that all tangible, intangible and other property whatsoever not subject to any security interest is also at risk by Grantor in satisfaction of the liability provided for in the Note and Contract Documents.

The term "Note" means the Promissory Note.

The term "Contract Documents" means the Note, the Security Agreement, and the Offer to Purchase/ Purchase Contract.

Unless the context requires otherwise (e.g. the term in question has been previously defined in this or another Contract Document), all terms used herein shall be construed as defined in the Uniform Commercial Code of Ohio and shall have the meaning stated therein.

SECTION THREE

REPRESENTATIONS AND WARRANTIES

Regarding any loan extended by Secured Party to Grantor, Grantor warrants that Grantor will use such funds for business purposes and that such funds will not be used for consumer, family or household needs.

All of the representations and warranties made and set forth in the Purchase Contract and other Contract Documents are hereby expressly incorporated herein by reference.

All statements made with respect to the Collateral (e.g. existence, title to, value of, etc.) are true and accurate.

Grantor shall not, either before or after the closing on the transaction contemplated by this Agreement and the other Contract Documents, cause or permit any act or omission that could result in any waste, impairment or diminution in the value of the Collateral pledged hereby, or which could otherwise negatively affect the practical benefit of Secured Party's bargain obtained under this Agreement and the other Contract Documents.

Grantor will not cause to be placed, or suffer or permit to be placed, any liens, encumbrances, etc., other than Secured Party's, upon any of the Collateral or any other assets of Grantor which may be utilized to satisfy Grantor's obligation/liabilities to Secured Party under the Note and other Contract Documents.

Regarding any attorney fee funds due and owing to Secured Party, resulting from legal fees received by Grantor from cases pledged as collateral in Section One (B)(2) of this instrument Grantor warrants and promises that he will act in a fiduciary and trustee capacity towards Secured Party.

SECTION FOUR
DUTIES OF GRANTOR

In addition to any other duties required elsewhere hereunder or under any other Contract Documents), at any time, and from time to time, upon demand of Secured Party, Grantor shall: (1) Deliver and pledge to Secured Party, endorsed or accompanied by whatever instrument or assignment, and in whatever form Secured Party may request, any other instrument, document, paper or other writing as Secured Party may specify with respect to the Collateral hereunder; (2) Give, execute or record any notice, document or other paper or writing that Secured Party may request to create or perfect any security interest granted and/or to enable the Secured Party to enforce its rights; (3) Keep and mark all documents, chattel paper and records relating to inventory, accounts, contracts and any other writing that Secured Party may require with respect to the Collateral; (4) Permit the agents or representatives of the Secured Party at any time to inspect the records with respect to the Collateral provided; (5) Cooperate with Secured Party in any manner deemed necessary/desirable by Secured Party to protect Secured Party's investment and/or to perfect its interest in the Collateral pledged as security hereby; (6) Immediately notify Secured party regarding any attorney fees received from cases listed in Subsection One (B)(2) of this instrument; (7) Immediately notify Secured Party of any breach of contract and/or of the escrow provisions set forth herein in Section One.

SECTION FIVE

FILING FINANCING STATEMENTS

Secured Party, in its discretion, may file (and Grantor shall cooperate in the preparation and filing of) one or more UCC financing statements under appropriate Federal or State Laws naming Grantor as Grantor and Secured Party as Secured Party and indicating any and all of the Collateral. For so long as Grantor has any repayment obligation (owes any money) to Secured Party, without prior written consent of Secured Party, Grantor shall not file, or permit to be filed, with respect to the Collateral any financing statement in which Secured Party is not named as the sole secured party.

Secured Party shall have the right, at any time, to execute and file this Agreement as a UCC financing statement, and/or to prepare and file other financing statements as provided for elsewhere herein, but the failure to do so shall not impair the validity or enforceability of this Agreement.

SECTION SIX

COLLATERAL UNDER CONTROL OF SECURED PARTY

If the Collateral, or any part thereof, shall at any time come under the control of the Secured Party or any of its agents, servants or representatives, the Secured Party, in its sole discretion, may transfer or

register, in the name of itself or its nominee, any of the Collateral.

Subject to the escrow provisions, set forth in Section One (C) hereinabove, Secured Party shall receive any income, benefits or other rights with respect to the Collateral provided and may treat the Collateral as its own property on such terms as the Secured Party deems best and exercise any power with respect to the Collateral with the same force and effect as though the Secured Party were the absolute owner thereof. The Secured Party need not give notice of its actions described herein and shall not be liable except to account for property actually received by it.

SECTION SEVEN

DEFAULT

1. On default of Grantor in connection with any of the Liabilities, including, but not limited to, any breach of any provision of any Contract Document, whether such default be that of the Grantor or other party obligated, Grantor shall, on the written request of Secured Party, assemble the Collateral at the place Secured Party designates in its request. Secured Party shall have the same rights and remedies with respect to the Collateral as does a secured party under the Uniform Commercial Code and shall have all rights held by the Grantor with respect to the Collateral.

2. The Grantor shall also be in default under this Agreement on the occurrence of any of the following events or conditions:

a) If Secured Party fails to receive all contracted-for amounts (i.e. repayment of the Purchased Fee amount plus any other contractually agreed-upon amount, if any), on or before the due Date and/or if the Grantor fails to pay, when due, any indebtedness secured by this Agreement, either principal or interest;

b) If the Grantor defaults in the punctual performance of any of the obligations, covenants, terms, or provisions contained or referred to in this Agreement, the Note or any other Contract Document;

c) If any warranty, representation, or statement contained in this Agreement, or any other closing Document, or made or furnished to the Secured Party by or on behalf of the Grantor in connection with same, or made or furnished to induce the Secured Party to purchase the Purchased Fees from Grantor, proves to have been false in any material respect when made or furnished;

d) If there is any loss, theft, substantial damage, destruction, sale or encumbrance of or to any of the Collateral or any assertion or making of any levy, seizure, or attachment of or on the Collateral;

e) If the Grantor dies, dissolves, terminates its existence, or fails in business; if a receiver is

appointed for all or any part of the property of the Grantor; if there is an assignment for the benefit of creditors by the Grantor; or if a meeting of creditors of the Grantor is called;

f) If any statement of the financial condition of the Grantor or of any guarantor, surety, or endorser of any liability of the Grantor to the Secured Party submitted to the Secured Party by the Grantor or any such guarantor, surety, or endorser proves to be false;

g) If the Collateral becomes, in the judgment of the Secured Party, unsatisfactory or insufficient in character or value;

h) If any guarantor, surety, or endorser for Grantor defaults in any obligation or liability to the Secured Party;

i) If the Secured Party receives notice, at any time, from any third party that the third party is acquiring or attempting to acquire a security interest of any kind in any of the Collateral that is the subject of this Agreement;

j) If the Secured Party learns that Grantor has violated, plans to violate, or has a record or reputation for violating any federal or state law relating to liquor, narcotics, or any commercial crime;

k) If Grantor removes or replaces any of the component parts of Collateral and/or materially impairs/lessens the market value of the Collateral;

l) Failure by Grantor to immediately notify Secured Party of Grantor's receipt of attorney fees from any specifically pledged collateral under Section One (B)(2) of this instrument; or

m) Failure by Grantor to immediately notify Secured Party of any breach by Grantor of the escrow provisions contained in Section One (C) or of any other breach of any of the Contract Documents; and

n) If any insurance insuring the Collateral and the respective interests of the parties in the Collateral is canceled for any reason and Grantor fails or refuses to furnish written proof to the Secured Party that Grantor has obtained substitute insurance coverage replacing the canceled policies;

SECTION EIGHT

REMEDIES

1. Upon the occurrence of any event of default which is described in Section Seven hereof or in any of the Contract Documents, and at any time after default, Secured Party may declare any and/or all secured and/or unsecured obligations immediately due and payable and may proceed to enforce payment of the obligations and exercise any and all of the rights and remedies provided by the Uniform Commercial Code (including, but not limited to proceeding against any Collatoral pledged hereunder), as well as exercising any

and/or all other rights and remedies at law or in equity possessed by Secured Party including but not limited to putting opposing counsel and/or an adjuster for a case specifically pledged as collateral in Section One (B)(2) on notice (by certified mail, intervention in a legal proceeding or otherwise) of Secured Party's lien and requesting that Secured Party's name be placed on any settlement check or payments of judgment.

2. All rights and remedies of the Secured Party, under this Agreement, are cumulative with any right or remedy that Secured Party may have at law, or in equity, or under any other contract or document for the enforcement of the security interest created in this Agreement or the collection of the debt, and the exercise of one or more rights or remedies shall not prejudice or impair the concurrent or subsequent exercise of any other rights or remedies.

SECTION NINE

COST OF COLLECTION

Grantor shall pay to Secured Party all expenses incurred by Secured Party, including reasonable attorneys' fees expended by Secured Party, in enforcing any of the provisions of this Agreement and/or any other Contract Document(s) including attorney fees for obtaining a judgment and, in addition attorney fees incurred in enforcement of any judgment.

SECTION TEN

ACCELERATION CLAUSE/DEFAULT RATE

In addition to any other rights/remedies set forth in this Agreement, and/or any of the other Contract Documents, and in addition to any other rights/ remedies Secured Party may have in law/equity if Grantor fails to timely furnish to Secured Party, attorney fees Grantor received from case(s) specifically pledged as collateral under Section One (B)(2) of this instrument, or should Grantor fail to make payment of the Note as and when due (e.g. on the Due Date, or, if applicable, on the Extended Due Date) or upon the happening of any other event of default, then all sums payable to Secured Party under the Purchase Contract and/or the other Contract Documents (including, but not limited to, the Note) shall be immediately accelerated and due and payable to Secured Party/its Assignee or designee. In the event of such an acceleration, then interest shall immediately begin to run and be due and payable on the outstanding Purchased Fees of the Note/ outstanding balance of the Purchased Fees, at the Default Rate of 1.25% (one and one quarter percent) interest per ten (10) day period thereafter until full satisfaction of the obligation.

SECTION ELEVEN

WAIVER OF PRESENTMENT, PROTEST AND NOTICE OF DISHONOR

Grantor waives presentment, protest and notice of dishonors and Grantor waives any rights to all other notices or demands that might otherwise be required by law, or to which Grantor might otherwise be entitled.

SECTION TWELVE

USUARY SAVINGS CLAUSE

It is the intention of Secured Party and Grantor that provisions of the Purchase Contract and the other Contract Documents constitute a purchase and sale an absolute and unconditional assignment of all of Seller's right, title and interest in and to the Purchased Fees and is not, nor should it be construed to be, a loan. Nor should the Note and/or Guaranty executed on even date herewith be construed to be a loan, as same are being given merely as security to ensure the payment of the Purchased Fees. Nonetheless, in order to protect against any conceivable determination that the conveyance was not effective, in the event of a determination by any Court or other trier of fact that the subject transaction does constitute a loan rather than a sale, it is the intent of Secured Party and Grantor to conform to and contract in strict compliance with applicable usury law from time to time in effect. In such event, all agreements between Secured Party and Grantor are hereby

limited by the provisions of this paragraph which shall override and control all such agreements, whether now existing or hereafter arising and whether written or oral. In no way, nor in any event or contingency (including, but not limited to prepayment, default, demand for payment, or acceleration of the maturity of any obligation) shall the rate of interest taken, reserved, contracted for, charged or received under this Agreement or the other Contract Documents or otherwise, exceed the Maximum Lawful Rate (defined below). If, from any possible construction of any document deemed by the trier to be a loan, interest would otherwise be payable in excess of the Maximum Lawful Rate, any such construction shall be automatically reformed and the interest payable shall be automatically reduced to the Maximum Lawful Rate, without the necessity of execution of any amendment or new document. As used herein, the term "Maximum Lawful Rate" means the maximum nonusurious rate of interest per annum permitted by whichever applicable law permits the higher interest rate for business and commercial transactions.

SECTION THIRTEEN

INCORPORATION BY REFERENCE

All of the terms and provisions of the Offer to Purchase/Purchase Contract and Promissory Note are hereby incorporated herein by reference the same as if fully set forth at length.

Grantors /s/ Walter C. Dumas
Walter C. Dumas, Individually

/s/ Walter C. Dumas
Authorized Signatory for
Dumas & Associates Law Corporation

State of Louisiana)
) ss
~~County~~ Parish of East Baton Rouge)

This instrument was sworn and subscribed to before me on August 12, 2004 by Walter C. Dumas and _____ and _____ and _____, as authorized signatory for Dumas & Associates Law Corporation

/s/ Ericka Gilbert #68585
Notary Public in and for the
State of LA
Printed Name: Ericka Gilbert

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(2)

No. 07-1586

FILED
JUL 18 2008
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

Supreme Court of the United States

WALTER C. DUMAS AND DUMAS & ASSOCIATES LAW CORPORATION,

Petitioners,

v.

BARCOSH, LTD.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION

GLEN R. PETERSEN
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QUESTIONS PRESENTED FOR REVIEW

1. Whether this Court should grant review where petitioners failed to show that the Fifth Circuit's ruling affirming the district court's granting of Barcosh's motion for summary judgment implicated any of Rule 10's considerations governing review on certiorari.

2. Whether this Court should grant review where petitioners failed to show that the Fifth Circuit's ruling affirming the district court's denial of petitioners' motion for new trial implicates any of Rule 10's considerations governing review on certiorari.

3. Whether this Court should grant review where petitioners failed to show that the Fifth Circuit's ruling affirming the district court's denial of petitioners' motion for relief from judgment implicates any of Rule 10's considerations governing review on certiorari.

4. Whether this Court should grant review where petitioners failed to show that the Fifth Circuit's ruling affirming the district court's grant of Barcosh's motion for temporary restraining order and its motion for preliminary and permanent injunctions implicates any of Rule 10's considerations governing review on certiorari.

5. Whether this Court should grant review where petitioners failed to show that the Fifth Circuit's ruling affirming the district court's issuance of a writ of sequestration implicates any of Rule 10's considerations governing review on certiorari.

6. Whether this Court should grant review where petitioners failed to show that the Fifth Circuit's ruling affirming the district court's granting of Barcosh's Motion for Withdrawal and Release of Funds implicates any of Rule 10's considerations governing review on certiorari.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Barcosh, Ltd. states that Barcosh, Ltd. is a privately held Ohio corporation. It has no parent company and none of its shares are held by a publicly traded company.

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TABLE OF CITED AUTHORITIES

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Cases

Baker Group, L.C. v. Burlington Northern and Santa Fe Ry. Co., 228 F.3d 883 (8th Cir. 2000) .. 16-17

Bank of Hawaii v. Benchwick, 249 F.Supp. 74 (D.C.Hi. 1966) 30

Burguieres v. Pollingue, 02-1385 (La. 2/25/03), 843 So.2d 1049 18

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Dodge & Ringer v. Salazar, 556 So.2d 1357 (La.App. 5 Cir. 1990) 22

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Gaspard v. Allstate Ins. Co., 2004-1502 (La.App. 3 Cir. 5/4/05), 903 So.2d 518 18

Hebert v. Blue's Auto and Truck Parts, 2000-2154 (La.App. 1 Cir. 12/28/01), 804 So.2d 953 4

Cited Authorities

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In re L. Lieb, 915 F.2d 180 (5th Cir. 1990)	24
Jones v. Northlake Disposal Services, Co., 2002-0076 (La.App. 1 Cir. 12/31/02), 836 So.2d 140	18
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Migra v. Warren City School Dist. Bd. of Educ., 465 U.S. 75, 104 S.Ct. 892 (1984)	17
N.Y. Life Ins. Co. v. Gillispie, 203 F.3d 384 (5th Cir. 2000)	26
Preferred Capital, Inc. v. Power Engineering Grp., 163 Ohio.App.3d 522, 839 N.E.2d 416 (2005)	24
Printing and Paper Trades Auxiliary Workers v. Cuneo Eastern Press, Inc. of Penn., 72 F.R.D. 588 (E.D.Pa. 1976)	31
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Sheldon v. Munford, Inc., 128 F.R.D. 663 (N.D.In. 1989)	31

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Smith Intern., Inc. v. Egle Group, LLC, 490 F.3d 380 (5th Cir. 2007)	16
Society of Lloyd's v. Turner, 303 F.3d 325 (5th Cir. 2002)	16
Speaks v. Kruse, 445 F.3d 396 (5th Cir. 2006)	25
Staley v. Harris County, Texas, 461 F.3d 504 (5th Cir. 2006)	25
Titlesite, L.C. v. Webb, 36,437 (La.App. 2 Cir. 12/11/02), 833 So.2d 1061	4
Turner v. Baylor Richardson Med. Ctr., 476 F.3d 337 (5th Cir. 2007)	21
United States v. 15.3 Acres of Land, 158 F.Supp. 122 (M.D.Pa. 1957)	30
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Vines v. University of Louisiana at Monroe, 398 F.3d 700 (5th Cir. 2005)	25
VRC, L.L.C. v. City of Dallas, 460 F.3d 607 (5th Cir. 2006)	25
Winston v. Millaud, 2005-0338 (La.App. 4 Cir. 4/12/06), 930 So.2d 144	22

Cited Authorities

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Constitutional and Statutory Provisions

La. Code Civ. P. art. 425 18

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STATEMENT OF THE CASE

Petitioners represented the plaintiff class in a case entitled *In Re Chemical Release at Bogalousa* in the 22nd Judicial District Court in Louisiana. That case settled, and petitioners expected to receive a minimum of one million to three million dollars in attorney fees. Petitioners subsequently entered into two purchase contracts pursuant to which they sold their right to receive the first $113,776.08 and $349,871.69 out of those attorney fees to Core Funding Group, an Ohio company. Both contracts were accompanied by promissory notes and security agreements. The agreements provided for interest, late fees, and attorney fees in the event payment was not made by the maturity date.

Petitioners failed to honor their obligations under the contracts and never made payment. Accordingly, Core Funding Group assigned the contracts and rights thereto to plaintiff Barcosh Ltd. (hereinafter "Barcosh"), an Ohio limited liability company, to pursue collection.

Jack J. Brady, an Ohio attorney, represented Barcosh. The contracts provided that venue and jurisdiction would be proper in Lucas County, Ohio.

Accordingly, Mr. Brady filed suit on Barcosh's behalf in the Lucas County Common Pleas Court, Toledo, Ohio, on February 14, 2006. Walter Dumas and Dumas and Associates Law Corporation (petitioners herein) were named as defendants.

Petitioners were served with the petition on February 21, 2006. In March of 2006, petitioners emailed

Mr. Brady and requested an extension of time within which to answer. Mr. Brady granted an extension until April 5, 2006. However, petitioners failed to file the appropriate stipulation extending the answer date. Therefore, Mr. Brady never changed the due date on his calendar.

Accordingly, Mr. Brady filed a motion for default judgment which was granted on April 4, 2006 ("the April 4th judgment"). Barcosh retained a Baton Rouge attorney, John Anderson, to collect on the April 4th judgment in Louisiana.

I. The 19th JDC Proceedings – The April 4th Judgment

On April 27, 2006, Mr. Anderson filed a petition in the 19th Judicial District Court for the Parish of East Baton Rouge, Louisiana, for recognition and enforcement of the April 4th judgment. On May 3, 2006, petitioners filed a "Petition to Annul Judgment" in the 19th JDC.[1] The petition to annul alleged that the **April 4th judgment** had been taken one day before the extension of time granted by Mr. Brady had elapsed.

Mr. Anderson notified Mr. Brady that he had taken the judgment one day early. Accordingly, on May 11, 2006, Mr. Brady notified petitioners that he would set aside the judgment and permit them to immediately file an answer. Petitioners did not respond to this notice.[2]

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[1] Of course, a Louisiana court has no authority to nullify or vacate the judgment of another state. *Knutsen v. Prince*, 40,109 (La.App. 2 Cir. 9/21/05), 911 So.2d 404, 407.

[2] It is undisputed that petitioners received this notice.

There were no further attempts to execute the April 4th judgment.

On May 23, 2006, Mr. Brady moved in the Ohio court to set aside the April 4th judgment. The Ohio court set aside the judgment, and petitioners were given ten days to answer. That same day, Mr. Brady notified petitioners of the same.

On June 19, 2006, a hearing was conducted in the 19th JDC on petitioners' petition to annul. At that time, all parties stipulated in open court that the 19th JDC action on the April 4th judgment would be dismissed without prejudice. Two judgments of dismissal without prejudice were signed — one on July 3, 2006, and the other on July 10, 2006.[3]

On June 28, 2006, petitioners filed a reconventional demand in the 19th JDC, alleging they incurred damages as a result of the premature April 4th judgment. On August 2, 2006, petitioners filed a motion for summary judgment in the 19th JDC on their petition to annul the April 4th judgment.

However, that judgment had already been voluntarily vacated and set aside. Therefore, Mr. Anderson filed an opposition noting that the April 4th judgment had already been vacated and the 19th JDC suit dismissed by the July 3rd judgment.

On August 21, 2006, petitioners moved to vacate the July 3rd judgment of dismissal. Petitioners asserted that

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[3] Contrary to petitioners' assertions, they received notice of these judgments.

they did not consent to the judgment and that the judgment did not contain language whereby the rights of all parties were reserved. The same day, without notice to Mr. Anderson or a hearing, the 19th JDC judge entered an *ex parte* order vacating the July 3rd judgment.[4]

Subsequently, a hearing on petitioners' motion for summary judgment was conducted on September 22, 2006. The only relief sought by the summary judgment was that the April 4th judgment be nullified. In fact, at the hearing, petitioners' counsel stated that "we're here on a motion for summary judgment to dismiss the petition filed by the plaintiffs." Petitioners' counsel stated further:

> Also they complain – after Mr. Dumas brought it to Barcosh's counsel's attention,

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[4] This type of "strategy" was not new in this litigation. For example, on November 13, 2006, Barcosh filed its opposition to petitioners' motion to dismiss in the federal district court and noted that the July 10th judgment had not been vacated. Remarkably, without notice to counsel for Barcosh, petitioners subsequently filed an "Ex Parte Motion to Vacate and Set-Aside Judgment", which the 19th JDC judge signed on December 5, 2006. That judgment purported to set aside the July 10th judgment. Petitioners attached a copy of that judgment to their Supplemental and Amending Motion to Dismiss in the federal district court. However, it is well settled under Louisiana law that a final judgment is not subject to substantive amendment on motion of the trial court or any party; the appropriate action is a timely application for new trial or timely appeal. La. Code Civ. P. art. 1951; *Titlesite, L.C. v. Webb*, 36,437 (La.App. 2 Cir. 12/11/02) 833 So.2d 1061. Therefore, the December judgment was absolutely null. *See Hebert v. Blue's Auto and Truck Parts*, 2000-2154, p. 9 (La.App. 1 Cir. 12/28/01), 804 So.2d 953, 956.

> Barcosh filed a motion to vacate the judgment. So this motion – the basis for the summary judgment is that it dismiss the ex parte petition to execute foreign judgment filed by Mr. Anderson to enforce the judgment in Ohio. Since the Ohio had been vacated, there is no reason that – you know, there is no reason to have the ex parte petition filed with the court.

Mr. Anderson agreed that the April 4th judgment was taken too soon and noted that the judgment was vacated and the suit ended. The state court judge granted the summary judgment and dismissed Barcosh's petition to enforce **the April 4th judgment** with prejudice. Petitioners were well aware that the judgment rendered on September 22, 2006, only dismissed with prejudice Barcosh's right to pursue enforcement of the April 4th judgment. In fact, at that time the 19th JDC judge made it clear that Barcosh was still entitled to bring a subsequent suit to enforce any other judgment:

> Mr. Anderson: Only one thing, your honor. The judgment says that the claim of Barcosh is dismissed with prejudice.
>
> The Court: In this matter, yeah.
>
> Mr. Dumas: This matter
>
> Mr. Anderson: Well, my question to the court is that our rights are still –

> The Court: Your rights are still your rights. That's right.
>
> Mr. Anderson: All right. And are you saying, your honor –
>
> The Court: But **this suit** is dismissed with prejudice. **That doesn't mean you don't have any rights. You can file your suit to have the foreign court judgment or whatever you want to do, but it may not even land in this division next time.**
>
> . . . .
>
> The Court: But you can't bring this suit back again and that's why I –
>
> Mr. Anderson: On that judgment.
>
> The Court: Yes.

The foregoing facts demonstrate that the only judgment at issue in the 19th JDC proceedings on September 22, 2006, was the April 4th judgment. Through September 22, 2006, the August 3rd Ohio judgment was never mentioned in the 19th JDC.

II. The 22nd JDC Proceedings

On September 28, 2006, Patrick A. Juneau, special master in the *In Re Chemical Release at Bogalusa* case ("the Bogalusa case") filed a Petition for Concursus in the 22nd JDC. R., p. 840, 862. The purpose of the

concursus proceeding was to require Barcosh and petitioners to present their claims against the attorney fees, while simultaneously absolving the special master of any further responsibility as to the funds. The funds were the collateral to the security agreements which were recognized by the August 3, 2006 Ohio judgment.

The funds that had been allocated out of the Bogalusa case to petitioners were deposited in the registry of the 22nd JDC on September 28, 2006. The 22nd JDC judge signed an order requiring the clerk of that court to accept the funds as well as any and all funds allocated to petitioners thereafter.

III. The United States Middle District Proceedings – The August 3, 2006 Judgment

As stated, petitioners did not respond to Mr. Brady's notice that he was setting aside the April 4th judgment and would permit them to immediately file an answer.

The Ohio court set aside the April 4th judgment on May 23, 2006, and gave petitioners ten days to answer. Mr. Brady notified petitioners that same day that the April 4th judgment had been vacated and that petitioners had until June 2, 2006, to file an answer. Petitioners refused to accept Mr. Brady's correspondence and never filed an answer.

On July 13, 2006, Mr. Brady notified petitioners via Federal Express that another motion for default judgment had been filed with the Lucas County Common Pleas Court. Mr. Brady also advised petitioners that a hearing on the matter had been set for August 3, 2006.

Petitioners refused service of the correspondence. Therefore, Mr. Brady sent the correspondence to petitioners via facsimile and U.S. Mail on July 19, 2006. Mr. Brady also forwarded the correspondence to Mr. Anderson, who hand delivered the documents to petitioners on July 24, 2006.

Petitioners refused to answer the suit. On August 3, 2006, the Ohio court rendered judgment against petitioners ("the August 3rd judgment"). The judgment rendered against petitioners became a final, non-appealable judgment.

On August 24, 2006, Barcosh filed a Complaint for Recognition and Enforcement of Foreign Judgment in the United States District Court for the Middle District of Louisiana. The complaint sought recognition of the August 3rd judgment.

Subsequently, petitioners filed a motion for summary judgment on December 11, 2006. The only issue raised in the motion was *res judicata*. Peitioners' motion alleged that the September 22, 2006 19th JDC judgment[5] had dismissed all of Barcosh's claims against them arising out of the purchase contracts. The motion also alleged that the claims, subject matter, and issues set forth in the Complaint for Recognition and Enforcement of Foreign Judgment had been adjudicated in state court and that there were currently proceedings in the 19th JDC involving the same issues.

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[5] The September 22, 2006 19th JDC judgment is the judgment which granted petitioners' motion for summary judgment dismissing Barcosh's suit regarding the April 4th Ohio judgment in the 19th JDC.

Barcosh subsequently filed a motion for summary judgment. Barcosh's motion noted that the subject of the proceedings in the Middle District was the August 3, 2006 Ohio judgment. Barcosh also noted that the Middle District proceedings did not assert a cause of action which arose out of the transaction or occurrence which was the subject of the 19th JDC proceedings.

On April 10, 2007, the district court denied petitioners' motion for summary judgment and granted Barcosh's. On April 17, 2007, the district court issued a final judgment that entitled Barcosh to recognition and enforcement of the August 3rd Ohio judgment.

Notably, on April 23, 2007, petitioners filed a motion to amend and supplement their reconventional demand in the 19th JDC. The motion asserted that the 19th JDC proceedings involved the same subject matter as the August 3rd Ohio judgment and rehashed the very same issues which had recently been ruled upon by the Middle District.

On April 30, 2007, petitioners filed a motion for new trial in federal district court. The motion reasserted *res judicata*.

A hearing in the 19th JDC on petitioners' motion to amend and supplement their reconventional demand was conducted on May 7, 2007. A judgment on petitioners' motion was never issued. *Unsigned* oral reasons for judgment, which were clearly submitted by petitioners, were entered into the record of the 19th JDC on May 15, 2007. Additionally, sometime shortly thereafter, a *proposed* judgment was sent to counsel for

Barcosh by petitioners. That judgment clearly evidenced petitioners' attempts to circumvent the judgment of the Middle District. For example, the judgment included the following gratuitous language:

> IT IS ORDERED, ADJUDGED AND DECREED that any cause of action Barcosh, LTD., may have had against plaintiffs-in-reconvention, Walter C. Dumas and Dumas & Associates Law Corporation, as a result of the August 3, 2006, Ohio judgment, rendered while Barcosh, LTD's Ex Parte Petition for Recognition and Enforcement of Foreign Judgment was pending in this Court but dismissed on September 22, 2006, is barred by *res judicata* and *preclusion by judgment.*[6]

Also, petitioners had previously attempted to obtain an *ex parte* order from the 22nd JDC judge to release the funds being held in the registry of that court. In their *Ex Parte* Motion and Order to Release Funds, petitioners raised the same *res judicata* arguments which were raised in the Middle District. Additionally, on April 3, 2007, petitioners filed a Motion for Summary Judgment/Exception of Res Judicata in the 22nd JDC, reasserting the same arguments which were being addressed by the Middle District.

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[6] The only issue before the 19th JDC judge was whether petitioners should have been allowed to file a supplemental and amending petition. Barcosh notified the 19th JDC judge that Barcosh had not received notice of any ruling by the court and objected to the proposed judgment. The letter noted that the proposed judgment contained rulings on issues that had never been before the 19th JDC.

It was clear that petitioners were attempting to use the state court proceedings to obtain a judgment contrary to the Middle District's and to unlawfully extract the $751,000 in the registry of the 22nd JDC. Therefore, on May 29, 2007, Barcosh filed a Motion for Temporary Restraining Order, Preliminary and Permanent Injunctions, and Writ of Sequestration in the Middle District. The motion requested a temporary restraining order, and preliminary and permanent injunctions, enjoining petitioners from taking any further action in the 19th JDC and 22nd JDC proceedings and enjoining those two proceedings from proceeding any further. The motion also requested a writ of sequestration, directing the United States Marshall for the Middle District of Louisiana and/or the United States Marshall for the Eastern District of Louisiana to seize the $751,000 which was being held in the registry of the 22nd JDC and to deposit those funds in the registry of the Middle District.

Barcosh's belief that petitioners were attempting to collaterally attack the Middle District's judgment was supported by petitioners' subsequent pleadings in that court. For example, on May 30, 2007, petitioners filed a Motion for Relief from Judgment Pursuant to F.R.C.P. Rule 60. The motion alleged that on May 15, 2007, the 19th JDC judge had ruled that the August 3, 2006 Ohio judgment was barred by *res judicata*.[7] The motion attached the unsigned oral reasons for judgment as an exhibit.

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[7] The alleged judgment was only a *proposed* judgment which was never signed.

On May 30, 2007, the district court denied petitioners' motion for new trial and motion for relief from judgment. The district court noted that the 19th JDC proceedings and the proceedings in the district court arose from separate transactions or occurrences, and reiterated that, "No matter how many times defendants restate their res judicata argument, it clearly lacks merit."

The district court also issued an order granting Barcosh a temporary restraining order and issuing a writ of sequestration. The district court found that petitioners were "trying to relitigate factual and legal matters having already been determined and decided by this Court in its Final Judgment and Order . . . dated April 17, 2007." The court also found that irreparable harm would result to Barcosh by having to relitigate those matters in the 19th and 22nd JDC's. The district court further found that petitioners were:

> engaged in a pattern of conduct in which they appear to be attempting to extract monies which constitute the collateral of the plaintiff [Barcosh] from the registry of the 22nd Judicial District Court, State of Louisiana for reasons that appear to be contradictory to the rights of plaintiff and the rights granted to plaintiffs under Judgment render[ed] by this Court, which will cause immediate and irreparable injuries to plaintiff.[8]

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[8] Thus, contrary to petitioners' assertions, the district court's order stated the reasons for issuance of the TRO and set forth why immediate and irreparable injury would be suffered.

Accordingly, the district court granted Barcosh's request for a temporary restraining order and writ of sequestration.

On June 6, 2007, the district court conducted a hearing on Barcosh's Motion for Preliminary and Permanent Injunction. During the hearing, Barcosh submitted records from the 19th JDC and 22nd JDC. Additionally, Barcosh took the testimony of Mr. Jack Brady. Mr. Brady's affidavits of correctness were submitted to the court, which verified the balance due on the contracts as of April 30, 2007. Mr. Brady testified that it was costing Barcosh a substantial amount of money to defend the litigation in the 19th and 22nd JDC's. Mr. Brady also testified that the funds in the registry of the 22nd JDC rightfully belonged to Barcosh, that he feared the funds were at risk, and that if Mr. Dumas succeeded in getting those funds, Barcosh's chance of recovering them was slim.

At the hearing, petitioners took no testimony and only offered into evidence the pleadings which have previously been filed. Petitioners informed the court that they would not submit any additional evidence at a hearing on the permanent injunction. Therefore, Barcosh requested that the district court make the preliminary injunction permanent. Regarding the requirement of a bond, Barcosh pointed out to the court that they were not requesting that the funds be turned over to Barcosh at that time, but only that they be put into the registry of the court.

At the conclusion of the hearing, the district court granted the preliminary and permanent injunctions.

The district court signed a judgment on June 7, 2007, permanently enjoining petitioners from taking any action to extract funds from the registry of the district court or the 22nd JDC. The judgment also enjoined the two state court suits, recognized the writ of sequestration issued on May 30, 2007, and directed the United States Marshal's Office for the Middle District, and to the extent appropriate and/or required by law, the United States Marshal's Office for the Eastern District, to seize and deposit into the registry of the Middle District the funds being held in the 22nd JDC's registry. The judgment ordered the funds to be held until further order of the court and dispensed with the requirement of a bond.[9]

The money in the district court's registry represented attorney fees earned by petitioners in the *In Re: Chemical Release at Bogalusa* case. Those funds were recognized in the August 3, 2006 Ohio state court judgment as funds which were the security for the two loans made to petitioners and which were absolutely, unconditionally, and irrevocably transferred, sold and assigned by petitioners to Core Funding. The Middle District Court's judgment recognized that Ohio judgment.

It had been more than seventy four days since the entry of the district court's April 17, 2007 judgment and more than thirty days since the district court denied petitioners' motion for new trial. At that time, the amount owed to Barcosh by petitioners was $1,180,55.70.

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[9] On June 7, 2007, the district court also issued supplemental reasons for injunctive relief.

Accordingly, on July 5, 2007, Barcosh filed a Motion for Withdrawal and Release of Funds. On July 24, 2007, the motion was granted. The district court ordered that funds being held in the court's registry be released to Barcosh.

On June 27, 2007, petitioners appealed the district court's ruling granting Barcosh's summary judgment and the district court's ruling denying petitioners' motion for a new trial. On June 14, 2007, petitioners appealed the orders granting the temporary restraining order and injunctions and recognizing the writ of sequestration. On August 22, 2007, petitioners appealed the district court's judgment granting Barcosh's Motion for Withdrawal and Release of Funds.

The Fifth Circuit consolidated the appeals. On March 20, 2008, the Fifth Circuit affirmed the district court's rulings. The Fifth Circuit recognized that this case involved "two separate default judgments from the Ohio court, and two separate enforcement actions in Louisiana." The Fifth Circuit rejected petitioners' argument that the Louisiana state court enforcement action and the Middle District enforcement action were based on the same subject matter. *See* Petitioners Appendix., p. 3. The Fifth Circuit further observed that, "the subject matter of an enforcement action is the foreign judgment itself, not the underlying claim that has already been adjudicated." *Id.* Therefore, because this case involves "two distinct judgments," the Fifth Circuit affirmed all rulings of the district court.

Petitioners then filed the instant petition for a writ of certiorari.

REASONS FOR DENYING THE PETITION

Petitioners assert that the ruling of the Fifth Circuit is in conflict with the decisions of this Court and decisions of the Fifth Circuit regarding the application of Louisiana's law on *res judicata*. However, the petition utterly fails to demonstrate how the considerations in Supreme Court Rule 10 are implicated by the rulings of the Fifth Circuit or that the Fifth Circuit's rulings are incorrect. The writ should therefore be denied.

I. Summary Judgment Was Properly Granted

A. Standard of Review

Appellate courts review *de novo* the district court's grant of summary judgment, applying the same standard as the district court. *Smith Intern., Inc. v. Egle Group, LLC*, 490 F.3d 380, 385 (5th Cir. 2007).[10]

B. Barcosh's Suit Was Not Barred by *Res Judicata*

"[A] federal court must give to a state-court judgment the same preclusive effect as would be given that judgment under the law of the State in which the judgment was rendered." *Baker Group, L.C. v.*

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[10] Louisiana law governs a motion for summary judgment enforcing a foreign judgment in a diversity action. *See, e.g., Society of Lloyd's v. Turner*, 303 F.3d 325 (5th Cir. 2002)(applying Texas's procedure for enforcement of a foreign judgment in Texas). In the instant case, Barcosh chose to enforce the Ohio judgment via the Louisiana Enforcement of Foreign Judgments Act, La. R.S. 13:4241, *et seq.*

Burlington Northern and Santa Fe Ry. Co., 228 F.3d 883, 885 (8th Cir. 2000) (citing *Migra v. Warren City School Dist. Bd. of Educ.*, 465 U.S. 75, 81, 104 S.Ct. 892 (1984)). "[I]ssues **actually litigated in a state-court proceeding** are entitled to the same preclusive effect in a subsequent federal suit as they enjoy in the courts of the State where the judgment was rendered." *Migra*, 465 U.S. at 81.

Louisiana's *res judicata* statute is La. R.S. 13:4231, which provides in pertinent part:

> Except as otherwise provided by law, a valid and final judgment is conclusive between the same parties, except on appeal or other direct review, to the following extent:
>
> . . . .
>
> (2) If the judgment is in favor of the defendant, all causes of action existing at the time of the final judgment arising out of the transaction or occurrence that is the subject matter of the litigation are extinguished and the judgment bars a subsequent action on those causes of action.
>
> (3) A judgment in favor of either the plaintiff or the defendant is conclusive, in any subsequent action between them, with respect to any issue actually litigated and determined if its determination was essential to that judgment.

Under this statute, the central inquiry is whether the second action asserts a cause of action which arises out of the transaction or occurrence which was the subject matter of the first action. *See* La. R.S. 13:4231 (Comment (a)).

Additionally, a second action is precluded only when *all* of the following are satisfied: (1) the judgment is valid; (2) the judgment is final; (3) the parties are the same; (4) the cause or causes of action asserted in the second suit existed at the time of final judgment in the first litigation; and (5) the cause or causes of action asserted in the second suit arose out of the transaction or occurrences that was the subject matter of the first litigation. *Burguieres v. Pollingue*, 02-1385 (La. 2/25/03), 843 So.2d 1049, 1053.

Further, under Louisiana law the burden of proof is on the pleader to establish the essential facts to sustain the plea of *res judicata*. The concept should be rejected when doubt exists as to whether a litigant's substantive rights actually have been previously addressed and finally resolved. *Jones v. Northlake Disposal Services, Co.*, 2002-0076 (La.App. 1 Cir. 12/31/02), 836 So.2d 140, 1143.[11]

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[11] La. C.C.P. art. 425(A) also provides that, "A party shall assert all causes of action arising out of the transaction or occurrence that is the subject matter of the litigation." This statute contains no penalty provision. Rather, it is merely a reference to the principles of *res judicata*. *Gaspard v. Allstate Ins. Co.*, 2004-1502, p. 3 (La.App. 3 Cir. 5/4/05), 903 So.2d 518, 520. All of the elements of *res judicata* must be met before such an exception may be maintained. *Id.*

Petitioners assert that Barcosh's motion for summary judgment should have been denied based upon *res judicata*. Petitioners assert that the claims and subject matter set forth in Barcosh's Complaint for Recognition and Enforcement of Foreign Judgment had been adjudicated in state court. Specifically, petitioners continue to assert that the September 22, 2006 19th JDC judgment dismissed all claims Barcosh had against them. Petitioners continue to fail to recognize that the subject matter of the 19th JDC proceedings was not the August 3rd judgment.

As the district court and Fifth Circuit noted, the validity of the August 3rd judgment was **never** litigated in a Louisiana state court. The **only issue** in the 19th JDC proceedings was whether the petition to enforce the April 4th judgment in Louisiana should be dismissed because the April 4th judgment was taken too soon. The occurrence out of which the cause of action in the 19th JDC arose was the April 4th judgment. The cause of action asserted in the Middle District arose out of the August 3rd judgment, which was not related to the subject matter of the 19th JDC litigation. In fact, Barcosh's suit in the 19th JDC had already been dismissed when the August 3rd judgment was entered in Ohio.[12] Accordingly, the cause of action asserted in the Middle District did not exist at the time of final judgment in the 19th JDC proceedings.

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[12] Petitioners' arguments that the July 3rd and July 10th judgment were invalid was not raised below. Those arguments are also incorrect and certainly do not implicate any of the considerations listed in Supreme Court Rule 10.

It is clear that the September 22, 2006 judgment dismissed only Barcosh's suit to enforce the April 4th judgment. The transactions or occurrences giving rise to the causes of action in the 19th JDC and the Middle District are the April 4th judgment and the August 3rd judgment, respectively, not the purchase contracts. Furthermore, as noted in footnote 4, *supra*, the judgment of September 22, 2006, dismissing Barcosh's claims with prejudice is invalid.

Accordingly, *res judicata* was not applicable and the Fifth Circuit correctly affirmed the district court's granting of Barcosh's motion for summary judgment.[13]

Petitioners have also failed to demonstrate how the Fifth Circuit's ruling implicates any of Rule 10's considerations. The two cases cited by petitioners are not inconsistent with the Fifth Circuit's ruling in this case. In the cases cited by petitioners, *res judicata* was applicable because the second suit arose out of the same underlying claim which had previously been adjudicated. In this case, as the Fifth Circuit noted, the subject matter of the enforcement action in federal court was the August 3rd Ohio judgment, not the April 4th judgment nor the validity of the underlying debt.

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[13] Petitioners argue that the August 3rd Ohio judgment should not apply to Dumas & Associates Law Corporation because Dumas & Associates was not a party to the Ohio suit and is not named in that judgment. However, Dumas & Associates was a party to the promissory notes and clearly a defendant in the Ohio suits. Nevertheless, petitioners never raised this issue in the district court or the Fifth Circuit.

II. Petitioners' Motion for New Trial Was Properly Denied

Appellate courts review the denial of a motion for new trial for abuse of discretion. *Dresser-Rand Co. v. Virtual Automation Inc.*, 361 F.3d 831, 839 (5th Cir. 2004).

Motions for a new trial or to alter or amend a judgment must clearly establish either a manifest error of law or fact or must present newly discovered evidence. *Turner v. Baylor Richardson Med. Center*, 476 F.3d 337, 344 -345 (5th Cir. 2007). These motions cannot be used to raise arguments which could, and should, have been made before the judgment issued. Moreover, they cannot be used to argue a case under a new legal theory.

In this case, petitioners' motion for new trial failed to establish manifest error of law or fact. Additionally, petitioners' motion for new trial simply parroted the arguments that it had previously made and the district court had repeatedly rejected.

Furthermore, petitioners writ seems to assert, for the first time, that a motion for new trial should have been granted because Dumas and Associates Law Corporation was not a party to any suit nor any judgment rendered in the State of Ohio. Petitioners never raised this issue at the district court or appellate level. Also, as previously noted, Dumas and Associates was a party to the promissory notes and a defendant in the Ohio suits.

Accordingly, the Fifth Circuit correctly affirmed the district court's denial of petitioners' motion for new trial. Furthermore, petitioners have failed to assert how the Fifth Circuit's ruling affirming the district court on this issue implicates any of the considerations in Rule 10.

III. Petitioners' Motion For Relief From Judgment Was Properly Denied

Petitioners observe that Fed. R. Civ. P. 60 provides that a court may relieve a party from a final judgment where the judgment is void or where it is no longer equitable that the judgment should have prospective application.

Petitioners assert that the district court's April 17, 2007 judgment is void. However, other than their *res judicata* arguments, petitioners have not explained why.

To the extent that petitioners imply that there was a lack of due process and lack of jurisdiction over the subject matter and petitioners, such arguments are without merit.

Louisiana courts must give full faith and credit to judgments of courts in sister states unless the foreign forum lacked jurisdiction over the litigants or over the subject matter involved in the controversy. *Winston v. Millaud*, 2005-0338, p. 8 (La.App. 4 Cir. 4/12/06), 930 So.2d 144, 151. The relevant law to determine whether the foreign court had jurisdiction is the law of the forum state rendering the original judgment. *Dodge & Ringer v. Salazar*, 556 So.2d 1357, 1360 (La.App. 5 Cir. 1990).

Petitioners had proper notice of the motion for default pursuant to which the August 3, 2006 judgment was rendered.[14] Petitioners had notice of the order setting aside the April 4th judgment.[15] Moreover, petitioners' allegation that they received no notice from the court indicating that they had to file an answer within ten days of May 23, 2006, is irrelevant. Petitioners were served with the initial petition and ordered by the court at that time to answer. They failed to do so.[16] Due process requires nothing further.[17]

Also, the purchase contracts unequivocally stated that jurisdiction would be proper in Ohio and that Ohio law would govern. Petitioners consented to the jurisdiction of the Ohio courts and were properly

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[14] In Ohio, as in Louisiana, every pleading subsequent to the initial petition may be served by mail, facsimile, or personal delivery. *See* Ohio Civ. R. Rule 5.

[15] It should be noted that petitioners admitted on numerous occasions in the 19th Judicial District Court that service of process of the Ohio complaint was made on petitioners.

[16] Petitioners also failed to submit any affidavits to the district court in support of their allegations that notice was lacking.

[17] Furthermore, although service of process was made on petitioners in the Ohio state court proceedings, it was not required. Dumas on his own behalf and on behalf of Dumas & Associates Law Corporation waived the requirement and necessity of service by his signature to the promissory notes themselves. Each note provided, in capital letters and bold print, that petitioners were giving up their rights to service and notice.

served.[18] Petitioners chose not to take any steps in the defense of the Ohio lawsuit and to risk a default judgment being rendered against them, which it was. Therefore, like petitioners' claim of *res judicata*, any claims of due process violations or lack of jurisdiction are not supported by the facts of the case or the applicable law.

Accordingly, the Fifth Circuit correctly affirmed the district court's denial of petitioners' motion for relief from judgment. Petitioners completely failed to assert how the Fifth Circuit's ruling affirming the district court on this issue implicates any of the considerations in Rule 10.

IV. The Temporary Restraining Order and Preliminary and Permanent Injunctions

Petitioners assert that the district court erred in granting the TRO. However, the grant of a temporary restraining order is not appealable. *In re L. Lieb*, 915 F.2d 180, 183 (5th Cir. 1990). Additionally, contrary to petitioners' unsupported assertions,[19] the district court

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[18] In Ohio, when a commercial agreement contains a valid forum-selection clause, a minimum-contacts analysis is not appropriate because the parties have waived the due-process/minimum contacts requirement for personal jurisdiction by way of the forum-selection clause and have consented to the jurisdiction of the court system specified in the clause. *Preferred Capital, Inc. v. Power Engineering Grp.*, 163 Ohio.App.3d 522, 839 N.E.2d 416, 424 (2005).

[19] Barcosh notes that petitioners have failed to include in their application a number of the rulings and orders at issue herein.

set forth in the TRO the reasons for its issuance. Barcosh's affidavit also set forth the facts which showed the risk of immediate and irreparable injury.

"[T]he ultimate decision whether to grant or deny a preliminary injunction is reviewed only for abuse of discretion." *Speaks v. Kruse*, 445 F.3d 396, 399 (5th Cir. 2006). An appellate court reviews a district court's grant of a permanent injunction under the abuse of discretion standard. *Staley v. Harris County, Texas*, 461 F.3d 504, 508 (5th Cir. 2006).

A preliminary or permanent injunction should issue if the movant establishes: (1) a substantial likelihood of and/or success on the merits; (2) a substantial threat of irreparable injury if the injunction is not issued; (3) that the threatened injury if the injunction is denied outweighs any harm that will result if the injunction is granted; and (4) that the grant of an injunction will not disserve the public interest. *Speaks*, 445 F.3d at 400; *See VRC, L.L.C. v. City of Dallas*, 460 F.3d 607, 611 (5th Cir. 2006).

The Anti-Injunction Act generally prohibits federal courts from interfering with proceedings in state courts. 28 U.S.C. § 2283 (2004). However, there are exceptions to this rule. In *Vines v. University of Louisiana at Monroe*, 398 F.3d 700 (5th Cir. 2005), the court considered a situation similar to the instant case. In *Vines*, the Court observed:

> The Anti-Injunction Act generally prohibits federal courts from interfering with proceedings in state court. 28 U.S.C. § 2283

> (2004). There are only three specific circumstances in which a federal court can enjoin a state court proceeding, when it is: (1) expressly authorized by a federal statute; (2) necessary to assert jurisdiction; or (3) necessary to protect or effectuate a prior judgment by a federal court. *Id.*; *St. Paul Mercury Ins. Co.*, 332 F. 3d at 308-09. The third exception is referred to as the "relitigation" exception. "The relitigation exception was designed to permit a federal court to prevent state litigation of an issue that previously was presented to and decided by the federal court. It is founded in the well-recognized concepts of res judicata and collateral estoppel." *Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140, 147, 108 S. Ct. 1684, 100 L. Ed.2d 127 (1988).

A four-part test has been adopted by the federal courts in determining whether the relitigation exception is applicable in a given case. First, the parties in a later action must be identical to (or at least in privity with) the parties in a prior action. Second, the judgment in the prior action must have been rendered by a court of competent jurisdiction. Third, the prior action must have concluded with a final judgment on the merits. Fourth, the same claim or cause of action must be involved in both suits. *Id.* at pp. 704 - 705; *Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140, 147 (1988); *N.Y. Life Ins. Co. v. Gillispie*, 203 F.3d 384, 387 (5th Cir. 2000). The relitigation exception is founded in the well-recognized concepts of *res judicata* and collateral estoppel. *Chick Kam Choo*, 486 U.S. at 147.

In this case, as both of the lower courts found, there is no serious dispute that the state court proceedings involved the same parties as the Middle District proceedings. There was also no contention that the court lacked jurisdiction. Accordingly, the first two elements of the relitigation exception were satisfied.

The third element was likewise satisfied. As the district court observed, it had entered judgment on April 17, 2007, which entitled Barcosh to recognition and enforcement of the August 3rd judgment against petitioners. Although petitioners had filed a motion for new trial, the district court had denied the motion prior to entering the injunctions. Moreover, for purposes of issue preclusion, final judgment includes any prior adjudication of an issue in another action that is determined to be sufficiently firm to be accorded conclusive effect. *Recoveredge L.P., v. Pentecost*, 44 F.3d 1284, 1295 (5th Cir. 1995) (citing Restatement (Second) of Judgments § 13 (1982)).

The fourth element of the relitigation exception was also satisfied. At the district court level, it was clear petitioners were arguing that the 19th JDC judge intended to "annul" the district court's April 17, 2007 judgment as well as the August 3rd Ohio judgment. As the district court aptly noted, the 19th JDC judge's oral reasons indicated that she intended to rule in direct contravention of the district court and find that the August 3rd Ohio judgment was unenforceable. Also, the 22nd JDC proceeding involved Barcosh's entitlement to the funds, which were collateral to the Barcosh security agreements which were recognized by the August 3rd

Ohio judgment. The lower courts also correctly found that the August 3, 2006 Ohio judgment was the central issue in all three courts.

Accordingly, all four elements of the relitigation exception were satisfied in this case.

Additionally, all four requirements for the issuance of a preliminary and permanent injunction were met.

Barcosh proved its case on the merits before either the preliminary or permanent injunctions were issued. Petitioners assert that there was no need for an injunction since their motion for new trial had been denied. Petitioners miss the point. It was clear that a substantial threat of irreparable injury existed if an injunction would not have been issued. As the district court held, immediate and irreparable injury would result if Barcosh was forced to repeatedly defend claims that were barred by *res judicata*. Under the relitigation exception to the Anti-Injunction Act, "courts have repeatedly held that immediate and irreparable injury results from having to defend claims that should be barred." *See Duffy & McGovern Accommodation Services v. QCI Marine Offshore, Inc.*, 448 F.3d 825 (5th Cir. 2006); *Santo Padre v. Pelican Homestead Savings Assoc.*, 749 F.Supp. 124, 126-27 (E.D.La. 1990), aff'd 937 F.2d 268 (5th Cir. 1991).

Furthermore, the risk of irreparable injury was especially great because petitioners had not only granted Barcosh a security interest in the funds, but had actually made an absolute assignment of the ownership of those funds to Barcosh.

The district court also correctly found that the threatened injury to petitioners was outweighed by any damage that an injunction would cause them. This finding is bolstered by the fact that Barcosh was clearly entitled to the funds in the 22nd JDC.

Lastly, the granting of the injunction did not disserve the public interest. As the district court astutely observed, the injunction only served the public interest by assuring that Barcosh, as the winner in federal court, was not deprived of the fruits of its victory by a later contrary state judgment which may or may not have been reviewable.

Based on the foregoing, the Fifth Circuit correctly affirmed the district court's issuance of the preliminary and permanent injunctions.[20] Petitioners have failed to show how that ruling implicates any of the considerations in Rule 10.

V. Funds Were Properly Released

Petitioners argue that the funds in the registry of the Middle District were not subject to any judgments or orders issued by the district court. Petitioners also argue that the Middle District's rulings did not make Barcosh the owner of the funds.

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[20] The district court properly converted the hearing on the preliminary injunction to a permanent injunction. *See* Fed. R. Civ. P. 65(a), which provides that, "[b]efore or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. . . ."

However, the district court's April 17, 2007 judgment recognized the August 3, 2006 Ohio state court judgment. The Ohio state court judgment, and thus the district court's judgment, recognized that the funds which were in the registry of the district court belonged to Barcosh.

It has long been the rule of law that money, when deposited, becomes in law the property of the party entitled to it, and subject to the disposal of the court. *See, e.g., United States v. 15.3 Acres of Land*, 158 F. Supp. 122, 124 (M.D.Pa. 1957). Funds deposited in the registry of a federal district court are *in custodia legis*. As such, the district court's control over the funds is virtually supreme. *United States v. Rubenstein*, 971 F.2d 288, 294 (9th Cir. 1992).

It is further well settled that property *in custodia legis* may be subjected to process or lien at the discretion of the court having custody thereof. *Bank of Hawaii v. Benchwick*, 249 F. Supp. 74, 80 (D.C.Hi. 1966).

28 U.S.C. § 2042 provides, in pertinent part, that, "[n]o money deposited under Section 2041 of this title shall be withdrawn except *by order* of court." (emphasis added). Pursuant to 28 U.S.C. §§ 2041[21] and 2042, the

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[21] 28 U.S.C. § 2041 provides, in pertinent part:

> All moneys paid into any court of the United States, or received by the officers thereof, in any case pending or adjudicated in such court, shall be forthwith deposited with the Treasurer of the United States or a designated depositary, in the name and to the credit of such court.

district court had discretion to release the funds in the registry of the court to Barcosh and the funds were properly released upon the district court's order.

Pursuant to Fed. Rule Civ. P. 69 and La. Code Civ. P. art. 2252, Barcosh had proceeded with execution of its judgment, and the funds were deposited in the registry of the district court.[22] It had been more than seventy four days since the entry of the district court's April 17, 2007 judgment granting Barcosh's motion for summary judgment and more than thirty days since the district court denied petitioners' motion for new trial. No stay of execution or supersedeas bond was ever filed by petitioners. Therefore, Barcosh was entitled to proceed with having the funds released to it.[23] Because Barcosh had proven that it was the rightful owner of the funds, it was within the district court's discretion to release those funds to Barcosh.

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[22] Fed. R. Civ. P. 69 provides that, "the procedure on execution – and in proceedings supplementary to and in aid of judgment or execution – must accord with the procedure of the state where the court is located. . . ." La. Code Civ. P. art. 2252 provides that, "[a] judgment creditor may proceed with the execution of a judgment only after the delay for a suspensive appeal therefrom has elapsed. . . ." La. Code Civ. P. art. 2123 provides that the delay for a suspensive appeal is 30 days from the date a motion for new trial is denied.

[23] Despite the taking of an appeal, a judgment creditor retains its rights in the judgment and the issuing court retains its jurisdiction to enforce the judgment until a supersedeas bond is posted or a stay granted. *Printing and Paper Trades Auxiliary Workers v. Cuneo Eastern Press, Inc. of Penn.*, 72 F.R.D. 588 (E.D.Pa. 1976); *see, e.g., Sheldon v. Munford, Inc.*, 128 F.R.D. 663 (N.D.In. 1989).

Therefore, the Fifth Circuit correctly held that the district court properly released the funds to Barcosh. Petitioners have failed to show how the Fifth Circuit's ruling implicates any of the considerations in Rule 10.

CONCLUSION

Based on the foregoing, Barcosh asserts that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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In The
Supreme Court of the United States

WALTER C. DUMAS AND
DUMAS & ASSOCIATES LAW CORPORATION,

Petitioners,

vs.

BARCOSH, LTD.,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

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ARGUMENT

On page 2 of its opposition to petitioners' petition for writ of certiorari, Barcosh admits that the September 22, 2006, judgment dismissed Barcosh's suit to enforce the April 4, 2006, judgment. This is not the first time Barcosh has admitted its petition to enforce the foreign judgment of April 4, 2006, was dismissed by the September 22, 2006, judgment. In support of its cross-motion for summary judgment, Barcosh states in paragraph 31 of its Statement of Uncontested Material Facts, "The court granted the summary judgment and dismissed Barcosh's petition to enforce the April 4th judgment with prejudice."

However, the Fifth Circuit states in its opinion (App. 4 of petitioners' petition for writ of certiorari) that when the April 2006 judgment was set-aside for procedural reasons, the Louisiana state court action was dismissed without prejudice.

If the Louisiana state court action had been dismissed before the September 22, 2006, judgment, why did Barcosh not file the appropriate motion before the September 22, 2006, hearing on petitioners' motion for summary judgment to have the motion for summary judgment dismissed?

Instead, Barcosh filed an opposition to the motion for summary judgment and on the day of the hearing, argued its opposition. Why did Barcosh not present and introduce the July 10, 2006, judgment of dismissal that was signed by the same judge who was hearing the motion for summary judgment? Why did Barcosh not want to present this July 10, 2006,

judgment to the court? The answer came months later. The judgment was invalid.

Barcosh is correct in stating there is no judgment in reference to the oral reasons for judgment issued by the court on May 15, 2007. There is no judgment because counsel for Barcosh wrote a letter to the judge objecting to her oral reasons and asking her not to sign a judgment until Barcosh could have a hearing on the proposed judgment.

However, instead of requesting a hearing in the 19th Judicial District Court, Barcosh went to federal court and obtained an order restraining and permanently enjoining petitioners from taking any steps to prosecute any legal actions including, but not limited to, filing any pleadings or requesting any hearings in two (2) state court suits. Therefore, petitioners could not take any action to obtain a signed judgment and continue with their action against Barcosh. Why did Barcosh need an order permanently restraining and enjoining petitioners from proceeding with its suit against Barcosh? The injunction barring two (2) state court proceedings is broader than necessary to protect or effectuate the district court judgment even if it were valid. *Chick Kam Choo v. Exxon Corporation,* 486 U.S. 140, 108 S. Ct. 1684, 100 L. Ed.2d 127 (1988).

Upon learning of the July 10, 2006, judgment, petitioners moved immediately to have it set-aside,

and it was set-aside by the same judge who signed the judgment on December 5, 2006.[1] Why did Barcosh not take any action to set-aside the December 5, 2006, judgment?

As to Barcosh's argument that the oral reasons for judgment (App. 11 of petitioners' petition for writ of certiorari) was submitted by petitioners in the record of the 19th Judicial District Court on May 15, 2007, a review of the document clearly shows it was issued by the court. If Barcosh believed the oral reasons for judgment were submitted by petitioners, why did Barcosh's counsel write the judge asking her not to sign the judgment in lieu of filing whatever motion it believed was appropriate? The answer, there was no appropriate motion to file.

Barcosh, in its opposition, includes a colloquy between counsel and the court and wanted this colloquy to be accepted as the 19th Judicial District Court giving Barcosh the right to bring another suit to enforce another judgment on the same subject matter. It should be pointed out that Barcosh's counsel did not mention the August 2006 judgment during this colloquy. If Barcosh believed the court gave it the right to file another petition for enforcement of a foreign judgment, why did it not file such a petition in the 19th Judicial District Court?

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[1] In its opposition to the petitioners' petition for writ of certiorari, Barcosh admits in footnote 4 that the July 10, 2006, judgment was set-aside on December 5, 2006.

Barcosh argued that petitioners for the first time raised the issue that Dumas & Associates Law Corporation was not a party in the Ohio proceedings. This argument is incorrect.

Further, the issue is addressed in the petition for writ of certiorari under the heading "A new trial should have been granted and relief from judgment should have been granted."

The Fifth Circuit, by affirming of the judgment of the district court, contradicts its ruling in *Baker v. Dearie*, 161 Fed. Appx. 361 (5th Cir. 2005). In *Baker*, a Louisiana court had held that an insurance company had a duty to defend its insurer in litigation in Louisiana. Afterward, in a proceeding in federal court, the district court granted a summary judgment in favor of the insurance company. The insurer appealed.

The Fifth Circuit held that in a diversity case, state law determines the preclusive effect of a prior state court judgment citing La. Rev. Stat. 13:4231(3).[2] The Fifth Circuit reversed the summary judgment that had been granted to the insurance company.

The same principal of law applies in this diversity case. The state court rendered a judgment

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[2] A judgment in favor of either the plaintiff or the defendant is conclusive, in any subsequent action between them, with respect to any issue actually litigated and determined if its determination was essential to that judgment.

approximately seven (7) months before the federal court judgment. The same petition filed in Ohio in reference to the two (2) notes was the basis for the April 2006 and August 2006 Ohio judgments.

The April 2006 and August 2006 judgments were based upon the same petition. You cannot have a judgment without a petition. The August 2006 judgment sets forth the same notes that were in the April 4, 2006, judgment. The same evidence was used to obtain both judgments. *Nelson v. City of Moss Point, Mississippi*, 701 F.2d 557 (5th Cir. 1983).

The Fifth Circuit has held that a state court judgment commands the same *res judicata* effect from the federal court as it would have had in the court that rendered it without regard to whether the state court applied state or federal law. *Rollins v. Dwyer,* 666 F.2d 141, 144 (5th Cir. 1982); *Sider v. Valley Line*, 857 F.2d 1043, 1046 (5th Cir. 1988).

The district court, neither in its ruling denying petitioners' motion for summary judgment nor its ruling granting Barcosh's motion for summary judgment, addressed the defense of preclusion by judgment raised by petitioners. Also, this issue was not addressed by the Fifth Circuit.

Both the April 2006 and August 2006 judgments arose out of the same transaction or occurrence. See *Matter v. Howe,* 913 F.2d 1138 (5th Cir. 1990).

Louisiana Code of Procedure 425 (preclusion by judgment) provides in part " . . . a party shall assert

all causes of action arising out of the transaction or occurrence that is the subject matter of the litigation."

As a result of both judgments arising out of the same transactions or occurrence and Barcosh's failure to include the August 2006 judgment in the litigation involving the April 2006 judgment, the August 2006 judgment is barred by preclusion by judgment.

Barcosh argues incorrectly that the August 2006 judgment was not before the court. Barcosh still fails to accept under Louisiana law there is no requirement that a petition or pleading had to be actually filed in order for preclusion by judgment to apply. The test is whether the cause of action before the court and the cause of action that should be before the court arose out of the same transaction or occurrence. The April 2006 judgment was before the court, and the August 2006 judgment should also have been before the court.

Barcosh now takes the position that the September 22, 2006, judgment is invalid. It's too late. If Barcosh believed the September 22, 2006, judgment was invalid, why did Barcosh not appeal the judgment?

More importantly, Louisiana law provides that a final judgment acquires the authority of a thing adjudged, no court has jurisdiction to change the judgment, regardless of the magnitude of the final

judgment. *Tolis v. Board of Supervisors of Louisiana State University*, 660 So.2d 1206 (La. 10/16/95).

CONCLUSION

For the above reasons, a writ of certiorari should be issued to review the decision and opinion of the Fifth Circuit.

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